

REPORT
OF THE
DISTRICT OF COLUMBIA
COURT SYSTEM STUDY COMMITTEE
OF THE
DISTRICT OF COLUMBIA BAR

PREPARED FOR THE
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE



APRIL 1983

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

18-348 O

WASHINGTON : 1983

5402-7

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, Jr., Delaware, *Chairman*

CHARLES H. PERCY, Illinois

TED STEVENS, Alaska

CHARLES MCC. MATHIAS, Jr., Maryland

WILLIAM S. COHEN, Maine

DAVID DURENBERGER, Minnesota

WARREN B. RUDMAN, New Hampshire

JOHN C. DANFORTH, Missouri

THAD COCHRAN, Mississippi

WILLIAM L. ARMSTRONG, Colorado

THOMAS F. EAGLETON, Missouri

HENRY M. JACKSON, Washington

LAWTON CHILES, Florida

SAM NUNN, Georgia

JOHN GLENN, Ohio

JIM SASSER, Tennessee

CARL LEVIN, Michigan

JEFF BINGAMAN, New Mexico

JOAN M. MCENTEE, *Staff Director and Chief Counsel*

C. LINCOLN HOEWING, *Professional Staff Member*

IRA S. SHAPIRO, *Minority Staff Director and Chief Counsel*

TERRY JOLLY, *Chief Clerk*

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

CHARLES MCC. MATHIAS, Jr., Maryland, *Chairman*

WARREN B. RUDMAN, New Hampshire

THAD COCHRAN, Mississippi

THOMAS F. EAGLETON, Missouri

LAWTON CHILES, Florida

WILLIAM LEONARD, *Staff Director*

EILEEN C. MAYER, *Chief Counsel*

MARGARET CRENSHAW, *Minority Chief Counsel*

SANDI MUSCHETTE, *Chief Clerk*

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA,
Washington, D.C., March 15, 1983.

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: In May, 1970, the Senate Committee on the District of Columbia published the report of the Committee on Administration of Justice to the Judicial Council of the District. This report proposed a program for improving the court system in the District of Columbia. It played a major role in the restructuring of the court system which was eventually enacted in the District of Columbia Court Reorganization and Criminal Procedure Act of 1970 (P.L. 91-358).

Now, over a decade later, a committee of the District of Columbia Bar has completed a study of the progress which has been achieved in the administration of justice since the 1970 Act, and of the possibilities for further improvement. Under the able leadership of a respected member of the District of Columbia Bar, Charles A. Horsky, the Court System Study Committee spent three years at its task. The result, which I transmit to you today for publication, is an extensive and exhaustive report, which the Subcommittee on Governmental Efficiency and the District of Columbia intends to use during the 98th Congress as it exercises its oversight responsibility to review the District court system.

The publication of this important and timely report will greatly enhance the Subcommittee's work in this area. I appreciate your assistance in seeing that this report will be available for this, and other purposes.

With best wishes,
Sincerely,

CHARLES MCC. MATHIAS, Jr.,
Chairman.

(III)

MEMBERS OF THE COURT SYSTEM STUDY COMMITTEE OF THE D.C. BAR

COURT OF APPEALS SUBCOMMITTEE

Charles A. Horsky, Esq., Chair	Curtis E. von Kann, Esq.
Barrett Prettyman, Jr., Esq.	David N. Webster, Esq.
Sidney Sachs, Esq.	

CIVIL TRIAL COURT SUBCOMMITTEE

William A. Bradford, Esq., Chair	Rufus King III, Esq.
Gerald M. Green, Esq.	Kenneth Mundy, Esq.
Thomas C. Green, Esq.	Daniel A. Rezneck, Esq.

CRIMINAL TRIAL COURT SUBCOMMITTEE

Steffen Graae, Esq., Co-chair	Judith Gorfkle, Esq.
John A. Turner, Esq., Co-chair	Christopher M. Kerns, Esq.
Gerald M. Caplan, Esq.	

CHILD NEGLECT AND JUVENILE DELINQUENCY SUBCOMMITTEE

Mary Ann Stein, Esq., Chair	Mark Foster, Esq.
Marty Beyer, Ph.D.	Wallace Mlyniec, Esq.

FAMILY COURT SUBCOMMITTEE

Sally Katzen, Esq., Chair	Rolland Lamensdorf, Esq.
Diane Dodson, Esq.	Mark Merson, Esq.
Bernice Just ¹	Sharon Shanoff ¹

STATUTORY COURTS SUBCOMMITTEE

Susan Freeman Schapiro, Esq., Chair	Eugene Rhoden
Zona Hostetler, Esq.	John E. Scheuermann, Esq.

COURT ORGANIZATION SUBCOMMITTEE

Thomas Lombard, Esq., Chair	Willie L. Leftwich, Esq.
Michael Altier, Esq.	Fred M. Vinson, Jr., Esq.
Edmund D. Campbell, Esq.	Honorable Peter H. Wolf ¹
William A. Hamilton	

COURTS AND THE COMMUNITY SUBCOMMITTEE

Charles R. Work, Esq., Chair	Ellen W. Eager
Robert Bates, Jr.	Susan M. Liss, Esq.
Niles Bond	Helen Marek

PROBATE, FIDUCIARY AND TAX SUBCOMMITTEE

Irvin B. Nathan, Esq., Chair	Irving B. Yochelson, Esq.
Doris D. Blazek, Esq.	

Chairman: Charles A. Horsky
Staff Director: Samuel F. Harahan

¹ Active members of the Committee who resigned before the Committee concluded its work.

PREFACE

The District of Columbia Court System Study Committee was established by the District of Columbia Bar in 1978. Its charge was to assess the effect of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 473), and to make such recommendations as were warranted for further improvement in the court system of the District. That the Committee has done, in the nine reports that follow this introductory statement.

The Committee consisted of forty-six attorneys and lay members, assisted by a full-time professional staff of one. Nine subcommittees were established, composed of those Committee members with experience and subject matter knowledge in a particular area. The initial draft of each of the nine reports was prepared by the subcommittee following extensive interviews, literature reviews, study of existing national advisory standards and of previous studies of the District of Columbia court system, and in some areas special case-flow studies. The draft was then circulated broadly within the judicial and legal communities in the District for comment and critique. The subcommittee then revised its initial draft for submission to the full Committee for its review. The final reports are those of the Committee as a whole. The process was time-consuming, but made it possible for the Committee to benefit from the broadest possible bases of expertise and experience.

The Committee was greatly aided by the positive and strong support that it received from the chief judges of the District of Columbia Court of Appeals and Superior Court. Indeed, both the bench and the bar, court personnel, and many others involved with the appellate and trial courts were generous in their support of the Committee's work. The Committee is grateful for the assistance and support of these many groups and individuals.

The direct and indirect financial support provided to the Committee by the D.C. Bar was critical to the viability and successful conclusion of the Committee's work. Additional financial support was received from other groups which have a direct interest in and concern for improvements in the administration of justice in the District—individual private law firms, foundations, and the District of Columbia courts themselves through the Law Enforcement Assistance Program. The Committee acknowledges with thanks the confidence in the worth of its efforts by the following foundations:

The Eugene and Agnes E. Meyer Foundation
The Philip L. Graham Fund
The George Preston Marshall Foundation (Redskin Foundation, Inc.)
The Rockport Fund

The Marjorie Merriweather Post Foundation
 The George Edward Fowler Memorial Foundation
 The Max and Victoria Dreyfus Foundation
 The Ford Foundation

and the following law firms:

Covington & Burling
 Wilmer, Cutler & Pickering
 Arnold & Porter
 Peabody, Lambert & Meyers

and the Federal Law Enforcement Assistance Administration financial support provided through the Office of Criminal Justice Plans and Analysis, and through the District of Columbia Courts' Judicial Planning Committee.

The Committee could not have carried out the task assigned to it without the help of its Staff Director, Samuel F. Harahan. As the sole staff available to assist nine active subcommittees as well as the Committee itself, Mr. Harahan was indefatigable well beyond any call of duty. His experience, his knowledge of the District, his enthusiasm and his patience—and occasionally impatience—made the Committee's task possible.

SIGNIFICANT PROCEDURAL AND SUBSTANTIVE THEMES

The Committee's reports contain analyses and conclusions across the entire court system of the District of Columbia, with some limited inquiry into such related areas as the provisions for judicial nomination, the tenure and disability arrangements, and a few other functions beyond the responsibility or control of the court system. They present findings and recommendations in five major areas: legislative reform, court rules, court policy and procedure, executive branch policy or procedure, and organized bar or other group action.

Most of the nine reports address the central comparative question of the effectiveness of the District of Columbia courts before and since the implementation of the 1970 D.C. Court Reform Act. Where a comparative analysis is not included, such as in the reports on small claims and child neglect, analytic or quantitative data on the period before court reorganization were not available.¹

These comparative examinations reveal important positive reforms in many areas as a result of the 1970 reorganization. Significant improvement in the timeliness of processing of juvenile delinquency cases, civil jury trial cases, probate matters, and several others are noted in the reports. Another important improvement noted by the Committee concerns the judicial and nonjudicial management of the District of Columbia courts. In many areas the administrative processes of the courts have been facilitated through greater use of court managers within and outside the judiciary. The reports take specific note of the improved citizen access to the courts as a result of the 1970 unification. Finally, the Committee observed a consistent viewpoint, expressed in most interviews held over the life of the study,

¹ The major source of information on the operation of the D.C. courts and related agencies before the 1970 reorganization was the working papers and final reports of the Committee on the Administration of Justice of the District of Columbia Circuit, dated May 1970, chaired by Newell W. Ellison, Esq.

with regard to the improved image of the District of Columbia courts since court reorganization. The level of respect and confidence in the courts has improved substantially in the ten years since court reorganization began in 1971.

While the nine reports of the Committee contain nearly five hundred separate recommendations and many hundreds of pages of supporting text, several substantive themes or issues appear repeatedly: calendar management, informational needs and improved statistical reporting, judicial and nonjudicial education and training, judicial deployment, nonjudicial staffing, court committees, and assistance of the bar and other groups.

The efficiency and effectiveness with which the courts of the District of Columbia schedule and dispose of matters brought before them was of major concern to the Committee. The focus of attention ranged from the very personal impact untimely courtroom calendaring practices have on families involved in domestic relations, child support or custody proceedings, to the need to restrict continuances and to adopt and enforce discovery timetables in civil and criminal cases. Extensive evidence is presented in the Statutory Courts Report, in the Courts and the Community Report, in the Child Neglect and Juvenile Delinquency Report, and in the Criminal Trial Report as to the impact of deficient calendaring practices upon litigants, witnesses, jurors and others, including court system personnel.

The public's need for adequate and timely information and guidance to use the District of Columbia courts was noted in many of the reports. In an era of increasingly limited court staffs and increasing caseloads it is particularly important that as many members of the public as possible be able to utilize the courts without constant instruction and assistance by court staffs. The other aspect of this general informational theme involved the adequacy and access to information about the functioning of the courts in various areas. While the variety of statistical and case-related information has increased dramatically since court reorganization, the timeliness and ease of access to such information needs major attention by the courts' leadership.

The critical need for greater judicial and nonjudicial education and training was identified as an issue in seven of the nine reports. A court system where judges are required to be available for service in any type of matter must also provide those judges, as a matter of course, with timely substantive continuing education relating to the areas of their particular judicial assignment.

A number of the reports examine the frequency of rotation and other factors relating to the use of judges within the various divisions and units of the trial and appellate courts of the District of Columbia. In general, the Committee supports the direction in which the courts have been moving, to longer-term assignments of judges to the major divisions of the courts, with more frequent rotation where the nature of the workload or other factors appear to require it.

The Committee reached no conclusion regarding the numerical adequacy of the existing forty-four-judge authorization for the Superior Court. Several of the reports—on the Family Court in the contested domestic relations area, on Statutory Courts in the landlord-tenant area, and on the Child Neglect and Juvenile Delinquency in the juvenile delinquency area—recommend that additional judges

be assigned to hear cases in these courts. In the Court Organization report, however, the Committee concluded that it lacked sufficient statistical evidence across the court as a whole on which to reach a firm conclusion on whether the potentials for improved case management in some areas would affect the need for more judicial attention to others. The Committee does recommend the temporary increase of three additional judges to the Court of Appeals to enable that Court to deal with an inordinately large backlog.

The Committee found that the level of court support staff was probate area, in the juvenile and adult probation services area, and in the clerk's office of the appellate court. Several reports commended the professionalism of the court staff and the courtesy and helpfulness which they accord to the public.

Five of the nine reports identified a need to develop a variety of *ad hoc* and standing committees within the courts, and that reports on their activities and agendas should appear in the various published reports of the courts from time to time. The reports on Court Organization, on Courts and the Community, and on Family Courts, in particular, contain discussion and recommendations in these areas.

The delegation of judicial administration decision making within the Superior Court to a number of divisional administrative judges was viewed by the Committee as an important procedural improvement. The Committee recommends that this positive reform be further improved by more formal delegations of authority, where appropriate, to these positions.

The final general theme that appears throughout the reports relates to the role and responsibility of the bar and other groups to assist the courts in a wide variety of areas. The reports contain numerous suggestions for areas where greater bar assistance would be of value to the courts.

CHARLES A. HORSKY,
Chairman.

MARCH 1982.

CONTENTS

	Page
Letter of Transmittal.....	III
Members of the Court System Study Committee of the District of Columbia Bar	IV
Preface	V
 Appeals Court Report.....	 1
Table of Contents.....	2
Civil Trial Court Report.....	55
Table of Contents.....	56
Criminal Trial Court Report.....	139
Table of Contents.....	140
Family Court Report.....	223
Table of Contents.....	224
Child Neglect and Juvenile Delinquency Report.....	377
Table of Contents.....	378
Statutory Courts Report.....	597
Table of Contents.....	598
Fiduciary, Probate and Tax Report.....	745
Table of Contents.....	746
Court Organization Report.....	795
Table of Contents.....	796
Courts and the Community Report.....	937
Table of Contents.....	938

COMMITTEE REPORT

APPEALS COURT REPORT
OF THE
D.C. COURT SYSTEM STUDY COMMITTEE

THE DISTRICT OF COLUMBIA BAR

May 27, 1980

Charles A. Horsky
Committee Chairman

Samuel F. Harahan
Staff Director

TABLE OF CONTENTS

Appeals Court Report

	<u>Page</u>
Introduction	1
Section I Workload and Backlog Problem.....	4
A. Waiver of Opinions	13
B. Summary Docket Panels	15
C. Administrative Agency Cases.....	15
D. Discouraging Appeals	16
E. Expanded Utilization of Senior Judges/ Prebriefing and Argument Conference	16
F. En Banc Hearings	18
G. Temporary Expansion of the Court of Appeals	19
Section II. Other Matters of Nonconformity With A.B.A. Standards.....	21
A. Opportunity for Appellate Review...	21
B. Procedure on Appeal.....	27
C. Assistance of Counsel.....	30
D. Decision Procedure	31
E. Administration	42
F. Caseflow Management	43
Appendix A -- Persons Interviewed	45
Appendix B -- Bibliography	47

APPEALS COURT REPORT RECOMMENDATIONS

	<u>Page</u>
1. <u>Recommendation: The Court Study Committee recommends that the parties to a case before the Court be accorded the option of waiving the necessity for an opinion in their case in return for an assurance of a substantially earlier decision.</u>	14
2. <u>Recommendation: The Court Study Committee recommends that cases on the summary docket, like motions, be decided by two-judge panels. If the two judges are in disagreement (which in such cases is unlikely but possible), a third judge, designated, not for the case but from time to time, by the Chief Judge for the purpose, would participate.</u>	15
3. <u>Recommendation: The Court Study Committee recommends that a further study of administrative appeals filed with the Court be undertaken promptly to determine whether alternative review procedures should be instituted.</u>	16
4. <u>Recommendation: The Court Study Committee recommends that the interest rate on appealed civil judgment cases be raised to the prime interest rate at the time of the trial court decision or the date of resolution, whichever is higher.</u>	16
5. <u>Recommendation: The Court Study Committee recommends that the Court require that there be filed with the notice of appeal in agency cases the challenged decision of the agency and in civil appeals the opinion or memorandum of the trial court, in order that a prompt conference can be held by a senior judge to determine whether, with the cooperation of the parties, the case could be handled on a simplified and expeditious basis.</u>	18

	<u>Page</u>
6. <u>Recommendation: The Court Study Committee recommends that senior judges participate in the hearing and deciding of cases by serving on panels of the Court to the extent they are willing to do so.</u>	18
7. <u>Recommendation: The Court Study Committee recommends that the Internal Operating Procedures of the Court be amended to provide that a case will be heard en banc when either a unanimous panel of three judges so request; or such a hearing is requested by any four judges. The Court should also encourage trial judges to certify, in appropriate cases, that a case involves a significant law-developing issue warranting consideration by the Court of Appeals for en banc hearing and decision.</u>	19
8. <u>Recommendation: The Court Study Committee recommends that the D.C. Court of Appeals be temporarily expanded by three judges from the present nine judges to twelve.</u>	20
9. <u>Recommendation: The Court Study Committee recommends that Section 11-721(a)(2)(C) of the D.C. Code be repealed.</u>	24
10. <u>Recommendation: The Court Study Committee recommends that Section 11-721(a)(2) be amended by adding a new subsection: "() finally determining any claim or issue which has been ordered to be severed and tried separately."</u>	25
11. <u>Recommendation: The Court Study Committee recommends that Rule 10(a)(1), 17(a) be amended to provide that in seeking appellate review of agency decisions, the parties be required, as in civil cases, to designate those portions of the record upon which they particularly rely, and that the agency be required to provide copies only of those parts.</u>	29

	<u>Page</u>
12. <u>Recommendation: The Court Study Committee recommends that the Court of Appeals Rules (and the Rules of the Superior Court) be amended to make express the allocation of responsibility as between assigned trial counsel and assigned counsel for appeal.</u>	30
13. <u>Recommendation: The Court Study Committee supports the present position of the D.C. Court of Appeals favoring bar and public comment on proposed rules and operating procedures prior to formal Court adoption.</u>	31
14. <u>Recommendation: The Court Study Committee recommends that opinions be assigned, after oral argument, by the senior judge in the majority.</u>	33
15. <u>Recommendation: The Court Study Committee recommends that the Court make public, at least two weeks in advance of oral argument, the names of the judges who will be sitting for that argument.</u>	35
16. <u>Recommendation: The Court Study Committee recommends that the Board of Judges of the Court of Appeals consider adoption of variations in the present operation of the panel system for a one-year period on a pilot basis.</u>	35
17. <u>Recommendation: The Court Study Committee recommends that the Court adopt the position on citation of opinions not formally published of the ABA; that such an opinion may be cited if the person making reference to it provides the court and opposing parties with a copy or otherwise gives them advance notice of its contents.</u>	38
18. <u>Recommendation: The Court Study Committee recommends that Rule VIII D of the Internal Operating Procedures of the D.C. Court of Appeals be modified along the lines proposed in the Young Lawyer Section Report.</u>	38

	<u>Page</u>
19. <u>Recommendation: The Court Study Committee recommends that Rule VIII-I be amended to place division opinions in criminal cases (with precedence to cases in which appellant is incarcerated and with further precedence to cases in which juveniles are incarcerated) above division and en banc concurrences or dissents.</u>	40
20. <u>Recommendation: The Court Study Committee recommends that Rule VIII-I add a category of child custody and child abuse and neglect cases and that they be assigned a high priority.</u>	41
21. <u>Recommendation: The Court Study Committee recommends that parties be supplied with a copy of a decision or opinion as soon as it is received by the clerk, and before it is printed.</u>	41
22. <u>Recommendation: The Court Study Committee recommends that at least two more assistant clerks be added to the office of the Clerk of the Court of Appeals.</u>	42
23. <u>Recommendation: The Court Study Committee recommends that the Court, after an opportunity for comment from the Bar, adopt and make public a caseflow management plan which will include all proceedings before it.</u>	44
24. <u>Recommendation: The Court Study Committee recommends that the Chief Judge clearly assign the overall management responsibility for the operation of the automated docketing system to the Clerk of the Court of Appeals.</u>	44

INTRODUCTION

The report which follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the appeal court area. The Court Study Committee's basic purpose has been to determine how the 1970 D.C. Court Reform and Criminal Procedures Act has worked in actual practice, and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. court system leadership, and to the community. The D.C. Court System Study Committee is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at the time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Appeals Court Subcommittee of the Court Study Committee was responsible for the principal investigative and analytic work leading to the findings and recommendations in this area. Subcommittee members responsible for the initial drafting included E. Barrett Prettyman, Jr., Sidney S. Sachs, Curtis E. von Kann, David N. Webster, and Charles A. Horsky, Chair. Samuel F. Harahan, staff director of the Court Study Committee also contributed to the report's Development.

The Court Study Committee in preparing the report which follows conducted detailed interviews with the judges of the D.C. Court of Appeals, and reviewed pertinent descriptive, evaluative and analytic materials in the appellate court area.

The appendices to this report contain a list of persons interviewed and references consulted.

The Court Study Committee appreciates the assistance and candor of those who contributed to our work in producing this report. The Committee was particularly impressed with the quality and substance of several analytic studies on the operation of the D.C. Court of Appeals. These reports, which are discussed more fully in the following section, materially aided the Committee in conducting its investigations. The Court is to be commended for initiating these several examinations, and for the degree of openness and cooperation extended to the Court Study Committee.

Before the creation of the Court Study Committee and its Court of Appeals Subcommittee, the work of the District of Columbia Court of Appeals had been the subject of a comprehensive study by the District of Columbia Judicial Planning Committee. In December, 1977 that body issued a study report entitled "The District of Columbia Court of Appeals and the A.B.A. Standards of Judicial Administration". As its title indicates, the Study Report examined in detail the congruence of the Court of Appeals with the "Standards Relating to Appellate Courts" of the A.B.A. Commission on Standards of Judicial Administration, which were approved by the A.B.A. House of Delegates in February 1977.

The Study Report dealt in detail, as did the Standards, with all aspects of the D.C. Court of Appeals -- its structure, the opportunities for appellate review, the assistance of

- 3 -

counsel, the decision procedure, court administration, case flow management, and facilities and services. The Court Study Committee saw no reason to re-examine what the Study Report had done, particularly since it found a high rate of conformance to the A.B.A. Standards:

There were, however, respects in which the Standards were not met, in whole or in part. Probably the most significant factor in the Court's non-conformance was its large backlog. Recognizing this, the Judicial Planning Committee (J.P.C.) created a subcommittee to study the workload problem of the Court of Appeals. In April, 1979 a Tentative Report was issued, entitled "District of Columbia Court of Appeals: Workload Problems and Possible Solutions." The Tentative Report was widely distributed, comments were solicited, and the subcommittee held two days of hearings. The J.P.C. Subcommittee on Appellate Workload Final Report, which addressed some of the issues raised in the comments and at the hearing, was issued in August, 1979 (Appellate Workload Final Report). The Appellate Workload Final Report contains a wealth of material supplied by the National Center for State Courts on various possible alternative answers to the workload problem, as well as current statistical information, which the Court Study Committee has closely examined.

This report is divided into two sections. The first addresses the problem of the Court's workload and the methods used to handle this workload. The second deals with a variety

- 4 -

of matters, particularly those as to which the Study Report found the Court of Appeals to be out of conformity with the A.B.A. Standards.

SECTION I WORKLOAD AND BACKLOG PROBLEM

The Appellate Workload Final Report stated that there were two fundamental aspects of the operation of the D.C. Court of Appeals which suggest the need for structural reform. (Page 140). These are the inordinate length of time -- 15.5 months average -- from notice of appeal to decision, and the extensive use of three judge panels as the means of deciding virtually all cases. While the Court Study Committee in the pages which follow will examine each of these factors, it is our opinion that unquestionably, the most serious issue with respect to the Court is the backlog of cases, and the consequent inordinate delay in rendering decisions. As the Appellate Workload Final Report notes (Table 2) as of the end of 1978 there were 1,109 cases pending, and the average days elapsed time from notice of appeal to decision was 472 days or 15.5 months. In 1979, that elapsed time decreased for the first time since the Court reorganization -- to 449 days, or just under 15 months. Since the Court disposes of approximately 1300 cases per year (1288 in 1977, 1331 in 1978, 1278 in 1979), it would take about nine months for the Court of Appeals to catch up even if no new cases were filed.

It is important to note, however, that the problem appears not to be getting worse, and indeed is improving slightly. New case filings in 1979 were only 68 more than in 1974 (1974 1128; 1979 - 1196), and in each of the last three years the number of appeals filed was smaller than in the

- 6 -

previous year (1% less in 1977, 4% less in 1978, 5% less in 1979). If the backlog could be eliminated, the Court appears to be able to handle its workload.

The Committee recognizes that, nationally, there is a tendency toward increased appeals, as noted by the Appellate Workload Final Report. This has not occurred in the District of Columbia, at least over the past several years. The population of the District has ceased to grow, and indeed has declined by more than 100,000 over the past decade, though business activity and regional population trends are rising. Appeals in civil cases have remained relatively stable; the 375 filed in 1978 were only 36 more than the 329 filed in 1973, although there was an increase of 44, to 419, in 1979. The great variation is in the number of appeals in criminal cases, which is virtually a direct function of how many criminal cases are disposed of by trial, with the likelihood of a subsequent appeal (43% of convictions after trial was appealed in 1977 and 1978). In 1979 the 574 criminal appeals were 168 less than the 742 filed in 1978, and only 5 more than were filed in 1973. The attitude of the prosecuting attorney toward plea bargaining is crucial. The number of agency appeals has not varied greatly in recent years. There were 124 in 1979, which was 48 less than the number filed in 1978, and only 6 more than the 118 filed in 1974. The Court Study Committee has no crystal ball, but its conclusion is that one can proceed on the assumption that the Court's workload, although it will

- 7 -

vary from year to year, is not likely to increase dramatically in the foreseeable future.

There is, of course, a second area of concern noted in the Study Report, and addressed in the Appellate Workload Final Report -- that almost all cases are decided by three-judge panels, rather than by the full court. The A.B.A. Standards (3.01) state: "In hearing and determining the merits of cases before it, the Supreme Court should sit en banc." Most state courts of final jurisdiction do so, although the Appellate Workload Final Report notes that 15 highest courts do not, and sit in panels or divisions.

There is obvious merit to the A.B.A. Standard, particularly in cases which involve the development of the law of the particular jurisdiction, rather than cases which simply correct errors by the trial courts. Participation by the full court brings, or should bring, the full wisdom and experience of all the judges to the cases which develop the law at oral argument as well as at the time of the decision and the opinion. Concern is expressed in the Appellate Workload Final Report that the use of panels by the District of Columbia Court of Appeals has a potential for inconsistent law being made by separate panels, but the Report contains no statistics on such occurrences as evidenced by approved petitions for rehearing en banc or other indices, and the Committee's experience does not suggest that this is a substantial problem.

Panels are, of course, the long-standing procedure of the federal courts of appeal. Sitting, like the District

- 8 -

of Columbia Court of Appeals in three-judge panels, these judges hear and decide cases involving both error correction and law making issues for the circuit. Very few of their decisions are reviewed by the Supreme Court. While a few en banc hearings are granted, their infrequency in most Federal circuits approximates that of the D.C. Court of Appeals. Inquiry by the Court Study Committee to the Research Division of the Federal Judicial Center about any pending or past examinations, or requests for evaluation of the three judge panel procedure in the federal appeal courts, revealed that no such studies have been done or are contemplated.

Finally, it should be remembered that it was not until August, 1973 that the final phase of civil and criminal jurisdiction was transferred to the D.C. court system. Thus, a period of only six and one half years has elapsed since full jurisdiction was accorded the D.C. Courts.

It is with this background that the Court Study Committee has considered the recommendation of the Appellate Workload Final Report that an intermediate appellate court be created in the District of Columbia.

There can be no doubt that an intermediate appellate Court would, in time, eliminate several respects in which the D. C. Appeals Court, at present, fails to meet the ABA standards for appellate courts. The highest appellate court in the District would always sit en banc. And, although there is no reason to believe that the present judges do not give adequate consideration to the issues in the cases which they decide, a

- 9 -

decreased workload for the highest court would provide more opportunity for reflection, for consultation, and for more carefully crafted opinions.

The achievement of these objectives must be weighed against several factors. One, which has become even more important in recent months, is the permanent addition to the District budget of at least \$700,000 per year (Appellate Workload Final Report, page 136) for seven new judges and their appropriate accommodations (courtroom, chambers, law clerks, etc.) even when there is subtracted the expense of two positions on the present Court of Appeals, which would be reduced to seven under the proposal in the Appellate Workload Final Report. The \$700,000 estimate would, from a budget analysis perspective, be seen as a 31% increase in the direct cost of appellate court administration in the D.C. court system.

Another is the effect which an intermediate court might play in reducing the present 15 month time to decision. The Committee has some doubt as to the effect of an intermediate court on this problem. (Many different models exist for dividing or organizing the jurisdiction between the intermediate court and the highest appellate court, and no effort will be made in this context to suggest respective jurisdictions for two such appellate courts in D.C.) The Appellate Workload Final Report points out that for those jurisdictions adopting the intermediate court approach the average time to disposition by the intermediate court is nine months. For cases decided at this appellate level which are not appealed further the time saving from

- 10 -

present operations by the D.C. Court of Appeals would be substantial - 15 months versus 9 months. The problem comes in determining the additional time required for the highest appeal court either to screen petitions and decline a full hearing, or alternatively to grant petitions for a hearing and then to dispose of the cases. The Appellate Workload Final Report states that the time to screen cases by the highest court in a state where intermediate courts also exist is about three months. Thus, in D.C., if we can accept the experiences of other jurisdictions as to the average time to termination of all appellate opportunity when the high court decides not to hear a case, it comes to - 9 months plus 3 months - about one year.

Some cases, under the proposal made in the Appellate Workload Final Report, would come directly to the highest Court. These are, of course, the most important cases. Data on the time for the highest court to render decisions when intermediate courts exist is very sketchy and subject to considerable interpretation. The Appellate Workload Final Report noted the interpretation issue difficulty and declined to offer any data in this regard. The Committee was able to obtain some additional information from the National Center for State Courts Appellate Justice Project. The statistics as to the time of disposition by the highest court where an immediate court is in operation are as follows:

- 11 -

	<u>Time to High Court Decision After Filing</u>	<u>Year of Data</u>
Alabama	12 months	(early 70's)
Maryland	11 months	1977
Massachusetts	8 months	not known
New Jersey	15 months	1977
New Mexico	8 months	1977
Oregon	11 months	not known
Washington State	23 months	not known

It should be noted that considerable caution is necessary in interpreting the above data. The jurisdictional arrangements between intermediate courts and high courts vary widely; the data do not distinguish between cases which go directly to the highest court, and thus necessitate time for preparation of the record, and cases which are heard first by an intermediate appellate court; some state courts have excessive workloads. It is likely, however, that the time to disposition in those cases granted a hearing in the highest court, were an intermediate appellate court to be established in the District of Columbia, would exceed the current fifteen month time to disposition by the present D.C. Court of Appeals.

A final consideration, from a workload and time delay standpoint, concerns the volume of the requests for further review by the highest court. The Appellate Workload Final Report noted that nationally the average filing level was 40 percent, with the high court granting about 15% of the petitions. It is difficult to project accurately the expected

- 12 -

demand level for appeals to the highest court given the presence of an intermediate court of appeals in the District, particularly since the respective jurisdictions of the two courts is an important factor. With criminal appeals averaging about 57 percent of total filings, during the last three years, it seems safe to assume that the filing level to the highest court in the District of Columbia, were it to have such an arrangement, would at least approximate the national average.

In light of the political and economic realities, the Committee believes that it is warranted in suggesting, at least for perhaps the next five years, alternatives to an intermediate appellate court. They will not achieve perfect compliance with the A.B.A. Standards, but they will, the Committee believes, eliminate the backlog. It may be that either because the alternatives do not have the hoped-for effect, or because the workload of the Court increases dramatically, or because the political and economic climate changes, an intermediate court will become a necessity rather than an ideal. The Committee believes, however, that only if the alternatives are tried will it be politically feasible to secure relief by way of an intermediate court. Moreover, even under the most optimistic assumptions, securing the approval by the political bodies which must be persuaded of the need for an intermediate appellate court will be a matter of several years. It is intolerable, in the judgment of the Committee, that the present delay in decision rendering by the present Court of Appeals should continue, if there are means by which it can be

- 13 -

ameliorated. If the Committee's proposals are found to be effective, it may still be desirable to have an intermediate court in order to have the highest court of the District always sit en banc. If the proposals do not reduce appellate delay, the persuasion of the political bodies that an intermediate court is essential will be greatly enhanced.

The Committee believes, moreover, that some steps which can be taken toward lowering the present high case backlog in the D.C. Court of Appeals are warranted even when they otherwise may appear regressive, if they are deemed only temporary until the Court achieves a current docket status, when they can be promptly terminated. Admittedly, this sort of trade-off is unfortunate, but the present delay in decisions by the D.C. Court of Appeals is even more unfortunate. We suggest, therefore, a number of measures.

A. Waiver of Opinions

The Committee has received, and approved, a suggestion that the Court initiate a program under which it would agree to render a decision within a specified time from the time the case is submitted -- 30 days -- if both parties to the appeal agree to such a time table, even if it results in no formal detailed written opinion being rendered. There are cases in which the parties would agree that what is essential is a prompt answer, irrespective of an explanation of the reasons behind the Court's answer. In its simplest form, the parties could execute a waiver immediately upon the first submission of the

- 14 -

case. In appropriate circumstances, it would also be possible that the case could be decided on the briefs filed in the Superior Court (e.g., on a motion n.o.v.) and the parties could waive an opinion and oral argument at the time the motion of appeal was filed, on the assurance that the decision would be promptly rendered. The Committee does not believe such cases would be so numerous as to be burdensome to the Court (and of course the waiver option could be terminated at any time), but its availability would eliminate some of the problems which the current backlog has created.

Recommendation: The Court Study Committee recommends that the parties to a case before the Court be accorded the option of waiving the necessity for an opinion in their case in return for an assurance of a substantially earlier decision.

The Committee also notes that in the pending revision of the Criminal Code the Court may be given jurisdiction to review the sentence imposed by the Superior Court. If that eventuates, the Committee believes that an appellant challenging only the sentence should be accorded the option of a prompt decision by filing his appeal in the form of a letter to the Court.

The Committee also notes that the opinions of the Court are becoming longer. While an opinion should be adequate to the importance of the case (and the Committee recognizes that there may have been more cases of importance recently), a decent judicial restraint may serve to dispose of cases somewhat more expeditiously. The Committee also fully endorses the following A.B.A. Standard's statement (3.36(b)):

- 15 -

"When the lower court decision was based on a written opinion that adequately expresses the appellate court's view of the law, the reviewing court should incorporate that opinion or such portions of it that are deemed pertinent, or, if it has been published, affirm on the basis of that opinion."

B. Summary Docket Panels

A substantial portion of cases are assigned by the Court to the summary calendar. Presently, cases on the summary docket are decided by a three-judge panel. Motions, however, are decided by a two-judge panel, with a third judge participating only when the two disagree. (The 1970 Act specifies that two judges shall constitute a quorum of a division of the Court (Sec. 11.706(c).)

Recommendation: The Court Study Committee recommends that cases on the summary docket, like motions, be decided by two-judge panels. If the two judges are in disagreement (which in such cases is unlikely but possible), a third judge, designated, not for the case but from time to time, by the Chief Judge for the purpose, would participate.

C. Administrative Agency Cases

The Committee also believes that the amount of time which the Court now must spend in considering some types of agency decisions is disproportionate to the importance of the cases, and that there is a potential for some relief for the Court in respect to agency appeals. Although the Committee was unable to undertake the analysis of such appeals over a period of years in order to arrive at a definite recommendation, it believes that a further study of the various types of agency decisions which now are reviewed by the Court is warranted.

- 16 -

The study should consider a number of alternative possibilities for various kinds of administrative decisions; e.g, initial review by the Superior Court, with further review in the discretion of the Court of Appeals; discretionary initial review of some administrative decisions by the Court of Appeals.

Recommendation: The Court Study Committee recommends that a further study of administrative appeals filed with the Court be undertaken promptly to determine whether alternative review procedures should be instituted.

D. Discouraging Appeals

Currently the losing party in a civil case must pay interest on the judgment during the time it is pending on appeal at the rate of only 6 percent. For certain types of cases, such as civil contract disputes or insurance negligence cases, the losing party may therefore have very little financial disincentive not to appeal. While most such cases are eventually settled before coming to decision in the Court of Appeals they do represent a workload for the Court and should be discouraged.

Recommendation: The Court Study Committee recommends that the interest rate on appealed civil judgment cases be raised to the prime interest rate at the time of trial court decision or the date of resolution, whichever is higher.

E. Expanded Utilization of Senior Judges/
Prebriefing and Argument Conference

One of the resources the Federal bench has been able to make very successful use of is the Senior Judge. While the D.C. Court of Appeals, as noted earlier, does use the senior status judges for handling settlement conferences as well as

- 17 -

in some other areas, it appears that much greater use of this important resource could be made.

One of the areas of concern expressed by several appeal court judges interviewed by the Committee in the course of the study, was the loose and inefficient presentation of cases by some attorneys, which results in the inefficient use of the Court's scarce resources as well. Serious consideration should be given to the expansion of the present prebriefing and settlement conference procedure handled by senior judges.

The settlement conference now takes place when counsel has filed notice of appeal and record. The Court should require by rule that counsel petitioning for review of agency decisions file the decision being challenged, and that counsel in all civil appeals file either the opinion or memorandum order being appealed from, or a copy of the party's Points and Authorities filed in the trial court. This would enable the senior judge at a conference immediately after the motion of appeal is filed to determine whether the case could be handled more expeditiously. Such cases could then be placed on the summary calendar for prompt disposition if the parties were willing to file the record in 30 days, and agree to seek no extensions of time, under penalty of having the appeal dismissed if they failed to make timely filings. The Committee believes that there are enough such cases to fully warrant the time of the senior judge in identifying them, and of the Court in disposing of them on a priority basis.

- 18 -

Recommendation: The Court Study Committee recommends that the Court require that there be filed with the notice of appeal in agency cases the challenged decision of the agency and in civil appeals the opinion or memorandum of the trial court, in order that a prompt conference can be held by a senior judge to determine whether, with the cooperation of the parties, the case could be handled on a simplified and expeditious basis.

The assistance which senior judges can give to the Court should not be limited to the preliminary conference. To the extent that they are willing to do so, they should regularly serve as panel members. Particularly when all possible resources available to the Court should be utilized to reduce the delay in disposing of cases, senior judges should be regarded as a precious resource, to be availed of to the maximum extent of their availability.

Recommendation: The Court Study Committee recommends that senior judges participate in the hearing and deciding of cases by serving on panels of the Court to the extent they are willing to do so.

F. En Banc Hearings

As noted earlier, the Committee recognizes the desirability of having all members of the Court participate in cases in which the Court is required to develop the law of the District of Columbia. At the present time, this occurs quite infrequently -- only about one percent of the cases filed in the Court are decided en banc. Part of the reason, of course, is the reluctance of the Court to devote the necessarily greater use of judicial time which en banc hearings require.

- 19 -

The Committee hopes that as a result of its other recommendations, this will not be of quite such concern. The other part of the reason, however, rests with the existing operating procedures of the Court which require a majority of the active judges to accept a request for an en banc hearing. The Committee believes that less than a majority of the Court should be able to ensure en banc consideration when the issue involved appears to warrant its consideration by all the judges. The judge of the Superior Court is also in a position to recognize when a case which he is called upon to decide involves a substantial development of the existing law. The Court of Appeals should encourage trial judges to certify such cases for the purpose of bringing them to the attention of the Court of Appeals. Whether or not to hear such a case en banc would, of course, rest with the Court of Appeals.

Recommendation: The Court Study Committee recommends that the Internal Operating Procedures of the Court be amended to provide that a case will be heard en banc when either a unanimous panel of three judges so request or such a hearing is requested by any four judges. The Court should also encourage trial judges to certify in appropriate cases that a case involves a significant law-developing issue warranting consideration by the Court of Appeals for en banc hearing and decision.

G. Temporary Expansion of the Court of Appeals

The magnitude of the case backlog in the D.C. Court of Appeals is sufficiently large to consider additional measures over those recommended above. The Court Study Committee believes that on a temporary basis the size of the Court

- 20 -

should be expanded. Two ways to accomplish this have been utilized in the past in other courts with backlog problems. The first, and in the Committee's judgment the least desirable, is by the appointment of Commissioners, one of whom would sit on each panel, prepare a draft opinion, but would not vote - the decision would be by the judges only. Commissioners have been used by courts in many states to relieve temporary congestion, although in recent years there have been few instances of this practice. The second, and more desirable, is to add additional judges, with the provision that when a judge retires, or is retired by reason of reaching age 70, his/her place will not be filled until the Court of Appeals has again been reduced in number to the present nine. The effect of this alternative would be to increase the size of the Court for a period of about five to nine years, given the lengths of service and ages of sitting judges on the Court, which should directly contribute to facilitating the more rapid disposition of appellate cases in the D.C. Court of Appeals.

Recommendation: The Court Study Committee recommends that the D.C. Court of Appeals be temporarily expanded by three judges from the present nine judges to twelve. Such an expansion would afford a more rapid reduction of the existing backlog. (The Court Study Committee is presently examining the issue of the judicial staffing of the D.C. Superior Court to determine if additional judges should be added to the Court. Should the Committee recommend that the Superior Court be enlarged, either temporarily or permanently, to a limited extent that would make it possible to assign several judges of the Superior Court to sit on panels of the Court of Appeals. Whether this alternative procedure

- 21 -

for temporarily increasing the size of the Court of Appeals is more desirable than that set forth in the recommendation above is best left up to the leadership of the D.C. Courts and the Council and Congress. The Committee is of the opinion that without such an increase in the Superior Court, it is not feasible to increase the present very minor use of Superior Court judges by the Court of Appeals.)

The foregoing recommendations, if adopted, would in the view of the Court Study Committee materially increase the ability of the Court of Appeals to dispose of its caseload, and gradually decrease its backlog.

SECTION II OTHER MATTERS OF NONCONFORMITY WITH A.B.A. STANDARDS

In the introduction to this report mention was made of an A.B.A. Standard/D.C. Appeal Court Comparison Study undertaken through the auspices of the District of Columbia Judicial Planning Committee. The Study Report was completed in December, 1977 and provided the D.C. Bar's Court Study Committee an excellent contemporary framework. The materials which follow relate closely to the Study Report and follow the same basic topic organization.

A. Opportunity for Appellate Review

Generally, the language of D.C. Code, Section 11-721, grants to the D.C. Court of Appeals jurisdiction to review all final orders and judgments of the Superior Court, and limited appellate authority to review certain Superior Court interlocutory orders. Judgments of the Small Claims and Conciliation Branch of the Superior Court, and criminal cases where the

- 22 -

penalty imposed is a fine of less than \$50. are reviewable only if one member of the Court of Appeals grants an application therefor. No legislation limits its power to issue extraordinary writs. These general provisions are consistent with the Standards.

1. Prosecution Appeals

The Court of Appeals is accorded appellate jurisdiction in one respect that exceeds the Standards. D.C. Code Section 23-104(b) provides that the prosecution may appeal Superior Court orders that deny the prosecutor the use of evidence at a forthcoming trial, as well as such orders made during a trial if the prosecution certifies that the appeal is not taken for purposes of delay and that the evidence is a substantial proof of the charge. (Section 23-104(a)) (The trial is thereupon adjourned for a maximum of 96 hours, after which, if the appeal has not been decided, it resumes and the appeal is void.)

While jurisdiction to hear such appeals during trial may be in excess of that believed appropriate by the A.B.A., it has not been a matter of concern to the Court of Appeals, nor an interference with its proper functioning. It is not a factor in the workload problem. Motions to suppress or return seized evidence are customarily disposed of prior to the trial, and only on rare occasions -- estimated by the Clerk to be perhaps once or twice a year -- is this jurisdiction invoked. The Court Study Committee does not recommend a change in this area.

- 23 -

2. Interlocutory Orders

The jurisdiction of the Court of Appeals to review as of right interlocutory orders does not correspond in all respects with the recommendation set out in the A.B.A. Standards. The Standards are met insofar as they recommend interlocutory appellate reviews of injunction orders (Section 11-721(a) (2) (A)) and insofar as they recommend appeals from orders suppressing evidence, as explained above. In several respects, however, appeals as of right from interlocutory orders are both narrower and broader than the Standards recommend.

(a) Section 11-721 (a)(2)(B) permits appeals from interlocutory orders of the Superior Court --

"(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships or the administration of conservators or to take steps to accomplish the purposes thereof."

This provision is modeled on the Federal provision in 28 U.S.C. 1292 (a)(2). The effects of such orders by the Superior Court are usually such that they could not be remedied by appeal from the final judgment entered in the proceeding, and reviewability as of right can probably be analogized to appeal as of right in orders granting or denying injunctions. The number of such appeals is not large. The Court Study Committee does not recommend a change.

(b) Section 11-721 (a)(2)(C) permits appeals from orders of the Superior Court --

- 24 -

"(C) changing or affecting the possession of property".

Whether such interlocutory appeals can be justified as dealing with matters where any error could not adequately be remedied by an appeal from a final judgment -- the test by which the A.B.A. Standards recommend all provisions for appeal as of right from interlocutory orders be evaluated -- is far from clear. There is obviously a large degree of overlap with Section 11-721 (a)(2)(A) and (B), to the extent that possession of property is involved in injunctive actions or in the appointment of a receiver, guardian or conservator. Any other order "changing or affecting the possession of property", whatever that might include, could, the Committee believes, await a final judgment.

Recommendation: The Court System Study Committee recommends that Section 11-721 (a)(2)(C) of the D.C. Code be repealed.

(c) The District of Columbia Code does not provide for one type of interlocutory appeal as of right, which the Standards recommend should be available -- appeals from a determination of any claim or issue which was severed and separately tried. Such appeals are not likely to be numerous, but they appear to be appropriate when the occasion arises -- such as when it appears desirable to sever and try separately an issue of liability when the issue of damages if liability is established will be complex and time-consuming. A federal analogy is the similar provision in cases of alleged patent infringement (28 U.S.C. Section 1292(a)(4)).

- 25 -

Recommendation: The Court Study Committee recommends that Section 11-721 (a)(2) be amended by adding a new subsection: "() finally determining any claim or issue which has been ordered to be severed and tried separately."

There are also some areas in which the Court's jurisdiction with respect to discretionary interlocutory appeals differs from the recommendations in the Standards. Under Section 11-721(d) of the D.C. Code, such appeals are limited to situations where the trial judge certifies that his/her "ruling or order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case." This Code provision parallels that applicable to federal Courts of Appeal (28 U.S.C. 1292(b)), and, as in the federal courts, is sparingly exercised *Plunkett v. Gill*, 287 A.2d 543 (D.C. 1972). The Standards, however, approve of two further areas.

The Standards approve of discretionary interlocutory appeals when resolution of the question of law will (a) "protect a party from substantial and irreparable injury," or will (b) clarify an issue of general importance in the administration of justice." The Committee does not believe it appropriate to expand Section 11-721(d) in either respect. Appeals as of right, as noted above, will provide relief in most cases, at least, where there is likely to be "substantial and irreparable injury." Questions of general importance can properly await

- 26 -

the final judgment of the trial court. Each proposal carries with it a real possibility of protracting litigation and superfluous applications for appellate review that undercuts the purpose of the final judgment rule.

The Standards also recommend, contrary to Section 11-721(d), that a prior written indication by the trial court that an interlocutory appeal should be allowed is a prerequisite to an application to the Court of Appeals, that the trial court's opinion should be expressed, but not made determinative if it fails to approve the proposed interlocutory appeal. The Court Study Committee does not recommend any change. It agrees with the statement in the Study Report (page 17):

"While the Standards make a sound theoretical argument against the § 11-721(d) procedure (i.e., the trial court should not be able to block interlocutory review simply by withholding the required certification), some strong contrary arguments are also pertinent, e.g., the fact that adopting the method preferred by the Standards would in effect make all interlocutory rulings subject to at least preliminary review by the appellate court, thus increasing the burden on the court and inviting the use of interlocutory review procedure as a delaying tactic. . . . [T]he fact that D. C. Code 11-721(d) sets forth the same procedure as that followed in the federal system under 28 U.S.C. § 1292(b) is an argument for its preservation as part of the general, desirable policy of maintaining procedural consistency between the federal and local courts in the District of Columbia."

B. Procedure on Appeal

1. Settlement Conference Procedure

As of May 1, 1978 the D.C. Court of Appeals provided in Rule 7A a Settlement Conference Procedure in the discretion of the Court. The conferences are, at present, conducted by a retired judge, and are designed to try and achieve an agreed-upon disposition of the appeal, or a limitation of the issues or other matters which would promote a prompt and fair disposition of the case. All further steps in completing the appeal are suspended until the settlement conference is concluded.

The Court Study Committee has received mixed reviews as to the operations under Rule 7A. While it has succeeded in achieving the intended results in many cases, it appears to have been only a delaying factor in others. The Committee feels, however, that the concept of a settlement conference is sound, and that if conducted in a sensitive, non-coercive manner can appreciably reduce the workload of the Court. Given the number of civil appeals, the Court should be alert to see to it that the Civil Appeals Statements filed in each civil case under Rule 7A(1) are given prompt and adequate attention, to determine which cases warrant the calling of a conference, and that when called, such conferences are held promptly. In view of the volume of such appeals, the Court should assign the responsibility for determining whether conferences should be held, and for conducting them, to both

- 28 -

active and retired judges whenever the retired judge, or judges, are unable to handle the workload in a timely manner.

2. Preparation and Filing of the Record

The rules of the Court of Appeals in connection with the preparation and filing of the record are generally in accord with the A.B.A. Standards. They depart, however, in requiring four copies of the record in civil cases, and three copies in agency review cases, except for the reporter's transcript, of which only one copy is required.¹ (Rule 10 (a)(1), 17(a)). In a civil case, the preparation of the four copies is by the Clerk of the Superior Court, in agency cases by the agency. In civil cases, counsel must designate and counter-designate that portion of the original record which they deem necessary for proper disposition of the appeal. In agency cases, however, the agency is required to provide three copies of the entire record; no designation procedure is provided. The method of handling the record in agency cases appears to involve unnecessary work and expense. Although the Committee has been advised by the Clerk that the usual agency record is not voluminous, and that when it is, as in occasional cases from the Board of Zoning Appeals, the Court will informally waive the 3-copy requirement and use only the one original record, The 3-copy requirement for the entire record should be changed

¹ In the event the transcript exceeds 200 pages, counsel must designate the pages on which they rely, and supply three copies to the Court.

- 29 -

to permit the record to be limited to those parts designated by the parties.

Recommendation: The Court Study Committee recommends that Rule 10(a)(1), 17(a) be amended to provide that in seeking appellate review of agency decisions, the parties be required, as in civil cases, to designate those portions of the record upon which they particularly rely, and that the agency be required to provide copies only of those parts.

Because the present method of handling records on appeal appears to be generally acceptable, the Court Study Committee does not recommend that practice be brought into conformance with that in the United States courts, desirable as that would be. The method of producing a record, as designated by the parties, as an appendix to the briefs, as required in Rule 30(a) of the Federal Rules of Appellate Procedure, has worked well in the federal system. It imposes the costs of the record on the parties, rather than on the Government, since it is a taxable item at the conclusion of the case, whereas the D.C. system imposes much of the costs of the record on the District Government itself -- all of the costs in the case of appeals from agencies.² In the Court Study Committee's opinion, it is only fair to have the litigants bear the costs of providing the appellate record.

² Litigants must pay the reporter for transcribing the proceedings, and must furnish three copies of such parts of the transcript as they tend to rely on in the event the transcript exceeds 200 pages.

C. Assistance of Counsel

As the Study Report notes, the Court of Appeals is in general conformity with the A.B.A. Standards in respect to assistance of counsel. The Standards have no recommendation as to whether the trial counsel, or new counsel, should be appointed on appeal, and the Court has no fixed policy in this respect, although its general practice is to recognize trial counsel, believing that this insures continuity of representation and probably results in the preparation of less transcript. The Court Study Committee recognizes both advantages and disadvantages in continuing trial counsel on appeal, and makes no recommendation for a change.

The Court Study Committee is concerned, however, that the Rules of the Court do not carefully mark out where the responsibility of the appointed trial counsel ends and where the responsibility of the appointed appeal counsel begins when representation changes. There is a possible no-man's land involving both post-conviction motions in the trial court, and problems that arise when a criminal conviction is reversed and a new trial ordered, where a definite demarcation of responsibility is necessary to be sure that no rights are jeopardized by failure of counsel to act.

Recommendation: The Court Study Committee recommends that the Court of Appeals Rules (and the Rules of the Superior Court) be amended to make express the allocation of responsibility as between assigned trial counsel and assigned counsel for appeal.

- 31 -

The Court Study Committee has also considered whether it is appropriate to provide for compensation of counsel when a petition for a writ of certiorari is filed. No such specific provision now exists, and the Committee does not believe that any change is appropriate. The result would be a great many unwarranted petitions, simply because there would be little to lose by attempting to win Supreme Court review. Avoiding that result by compensating counsel only when the Court itself certifies or otherwise rules that a petition for certiorari is warranted, as has been suggested, would involve the Court in an inappropriate exercise, as well as adding substantially to its workload. In the occasional case in which a petition for certiorari is appropriate, counsel who handled the case in the Court of Appeals will, in all probability, undertake the responsibility on a pro bono basis.

D. Decision Procedure

1. Internal Operating Procedures and Rules

Until recently the Internal Operating Rules of the D.C. Court of Appeals were not made public. These Rules have been published and now are generally available. Although no opportunity was accorded the bar or the public to comment on the operating rules before publication, the Court Study Committee understands the Court now favors eliciting bar and public comment on future rules and operating procedure changes.

Recommendation: The Court Study Committee supports the present position of the D.C. Court of Appeals favoring bar and public comment on proposed rules and operating procedures prior to formal Court adoption.

2. The Panel System

As the Court presently operates, it generally meets the A.B.A. Standards with respect to briefs, preparation for and conduct of oral argument, and decision. Its most serious divergence is in the manner in which the panel system is operated. Panels sit only for one-half day, they are not announced in advance, and the opinion in the cases for argument is assigned to a member of the panel at the time the panel is selected.

The present procedure has several apparent disadvantages. It makes it very difficult, if not impossible, to assure that cases involving similar issues are assigned to the same panel, where they could be handled more expeditiously. It forces each judge to sit on one or two cases almost every week with very little opinion writing time in between so that by the time the judge gets around to writing the opinion, the case is "cold" in his/her mind. The existing procedure of assigning opinions prior to oral argument also tends to make only the assigned judge pay strict attention to the argument.

(a) Opinion Assignment and Reassignment

The procedure by which opinions are assigned is, presumably, designed to insure that the work load is evenly distributed. Assignment prior to oral argument, however, is contrary to the A.B.A. Standards. The Court Study Committee believes it far more desirable to deal with the workload

- 33 -

problem in other ways, and favors a procedure of having the opinion assigned by the judge who presides on the panel to the judge in the majority who can best express the opinion of that panel.

Recommendation: The Court Study Committee recommends that opinions be assigned, after oral argument, by the senior judge in the majority.

As noted above, the method now used by the Court to assign responsibility for opinions is designed to assure that each judge has an equal number assigned. That system does not take into account that some judges work faster than others, nor that opinions in some cases require much more time than others. The A.B.A. Standards recommend that, in order to assure the most expeditious disposition of cases, a court should have a system that permits the Chief Judge to reassign opinions from a judge who is far behind schedule, and that avoids assigning new opinions to such a judge until he has caught up.

While it may be possible in D.C. for the Chief Judge to reassign opinions, in practice it is never done, and there is no system by which the assignment of an equal number of opinions can be modified to recognize the slower judge, or the more difficult case. The Committee understands that the Board of Judges rejected a suggestion that the assignment system be modified so that fewer opinions would be assigned to a judge with a large backlog. Peer pressure, in the form of a report which is circulated at each monthly meeting of the judges,

- 34 -

showing the number of opinions due from each judge, is relied on to bring the delinquent judge up to speed, (Internal Operating Rule III E). The Court Study Committee does not know how serious the "slow judge" problem is in the Court at the present time. There is a human danger in the recommendation of the A.B.A. Standard that a judge who is not simply slow, or burdened with one or more complex cases, but rather is simply lazy, can impose on the other members of the Court. The Court Study Committee therefore makes no recommendations, but does suggest that the judges of the D.C. Court of Appeals recognize that the Chief Judge has a responsibility to deal with any situation that appears to be substantially delaying opinions in submitted cases by having opinions reassigned; and that failure to do so may adversely affect appellees.

(b) Advance Notice of Panel Judges

The United States Court of Appeals for the District of Columbia has within the last few years announced in advance the names of the judges who are to sit on a given day. The fear that advance knowledge would prompt requests for continuances in order to avoid a particular judge, once it was known who would be on the panel, has not materialized. On the other hand, once the composition of the panel is known, the oral argument may not infrequently be more effective and more useful; prior opinions of members of the panel can be more adequately addressed, and both bench and bar benefit. The multiplicity of panels under the Court's current system does

not make public announcement infeasible; the information now known to the judges need only be made available to the public.

Recommendation: The Court Study Committee recommends that the Court make public, at least two weeks in advance of oral argument, the names of the judges who will be sitting for that argument.

(c) Panel Rotation

The desirability vel non of a multiplicity of panels -- two different ones each day -- is not addressed in the Standards. For the reasons already noted, there appears to be more merit to the more customary system of panels that continue for a week, with a corresponding several week period when the judge is free from sitting, to permit work on the opinions in the cases just heard. Although the Court Study Committee believes the customary system is best, it also recognizes that the system in which the court is best able to consider cases fairly and expeditiously is the one which should be adopted.

Recommendation: The Court Study Committee recommends that the Board of Judges of the Court of Appeals consider adoption of variations in the present operation of the panel system for a one year period on a pilot basis. Such areas as those generally described in this portion of the Report should be explored in considering any pilot program.

3. Citation of Unpublished Opinions

The Court of Appeals internal operating procedures are not consistent with the A.B.A. Standards with respect to the citation of unpublished opinions. Rule IX C prohibits citation of such opinions except in limited circumstances,

- 36 -

such as when relevant as law of the case, or res judicata. The Standards, on the other hand, provide that unpublished opinions may be cited only if copies, or notice of their content, are made available to the court and opposing parties.

This is an issue on which there is, and probably always will be, a strong diversity of opinion. Two judges dissented from the no-citation rule when it was adopted by the Court of Appeals in 1978. The Court Study Committee endorses the ABA Standard. It also believes that the Court can minimize whatever fears it may have had which led it to adopt Rule IX-C by instituting more stringent rules in Part VIII-D of the Internal Operating Rules of the Court to the end that opinions that are unpublished will be such that occasions for their citation as precedent or authority or for any other reason (other than those now recognized in Rule IX-C) would be most unlikely.

In April 1979 an ad hoc committee of the Young Lawyers Section of the Bar Association of the District of Columbia, appointed at the request of the Chief Judge of the D. C. Court of Appeals, examined the current provision in the Internal Operating Procedures as to publication of opinions, and filed a report. Its examination of the unpublished opinions during a three-month period (some 103 opinions) led it to the conclusion that the guidelines set out in Rule VIII-D were being followed. However, the ad hoc committee also concluded that Rule VIII-D was so written that opinions which should be published might not be, and recommended changes.

The present Rule VIII-D, which describes the opinions that Rule IX-A provides shall not be published, reads:

"D. A Memorandum Opinion and Judgment is utilized when the division unanimously determines that a judgment of the trial court or a decision or order of an administrative agency should be affirmed or enforced and that this court's decision has no precedential or institutional value, and any one or more of the following circumstances exists:

"1. That a judgment of the trial court is based on findings of fact which are not clearly erroneous;

"2. That sufficient evidence supports a jury verdict;

"3. That substantial evidence on the record as a whole supports a decision or order of an administrative agency;

"4. That no prejudicial error of law appears;

"5. That no new rule of law is established or an existing rule altered or modified; no legal issue of continuing public interest is involved; and no existing law is criticized.

"In addition to considerations outlined above a Memorandum Opinion and Judgment which affirms the trial court on a direct criminal appeal or a collateral attack on a criminal judgment shall include a statement of those issues considered by the panel. Such statement of issues may be made by reference to a trial court opinion.

"An objection by any member of the division to the use of a Memorandum Opinion and Judgment shall require publication."

The Young Lawyers Section report concluded that under the rule as drafted "virtually any case could qualify for non publication depending upon the totally subjective

- 38 -

general conclusion of a particular panel that a decision is of no precedential value," since "any one or more" of the circumstances quoted above will suffice. The Report suggested a redraft of Rule VIII D which would read:

"D. A Memorandum Opinion and Judgment shall be utilized when a division unanimously determines that a judgment of the trial court or a decision of an administrative agency should be affirmed or enforced, and this court's decision

"1. Does not establish a new rule of law;

"2. Does not alter, modify, criticize, or clarify an existing rule of law;

"3. Does not apply an established rule of law to a novel fact situation;

"4. Does not constitute the only, or only recent binding precedent on a particular point of law in this jurisdiction;

"5. Does not involve a legal issue of continuing public interest; and

"6. Does not find any error of law."

Recommendation: The Court Study Committee recommends that the Court adopt the position on citation of opinions not formally published of the ABA; that such an opinion may be cited if the person making reference to it provides the court and opposing parties with a copy or otherwise gives them advance notice of its contents.

Recommendation: The Court Study Committee recommends that Rule VIII D of the internal Operating Procedures of the D.C. Court of Appeals be modified along the lines proposed in the Young Lawyer Section Report. Such a redraft will make for a more objective judgment by the Court under Rule VIII D, and further should make it so unlikely that there would ever be reason to cite an unpublished

- 39 -

opinion that the issue over Rule IX D should be essentially moot.

4. Opinion Writing Priority

The A.E.A. Standards recommend that a high priority be given to disposition of criminal cases in the writing of opinions. The Internal Operating Procedures of the Court of Appeals now assign priorities as follows (Rule VIII I);

- Pretrial bail appeals
- Extradition appeals
- Pretrial government appeals
- En banc opinions
- En banc concurrences or dissents
- Division opinion concurrences or dissents
- Division opinions in criminal cases (with
precedence to cases in which appellant
is incarcerated)
- Public Service Commission appeals
- Division opinions in civil cases

The Court Study Committee believes that the priorities thus provided are generally responsive to the Standards, in that the disposition of matters accorded a priority even over the disposition of criminal cases, with one exception, appear to warrant the prior consideration of the Court. The exception is "Division Opinion Concurrences or Dissents." The Court's internal operating rules (Rule VIIIE) permit an opinion to be issued after 60 days even if the author is informed that there will be concurring or dissenting opinions. Although the Committee is informed that in practice the majority opinion is rarely issued until a concurrence or dissent is ready, the fact that the Court is prepared to have concurrences or dissents filed later appears to the Committee to warrant putting this category of opinions below those in criminal cases.

- 40 -

The A.B.A. Standards, however, do not appear to the Committee to be entirely adequate. They do not recognize the need for the most prompt disposition possible of juvenile cases. The priority accorded criminal cases when the accused is in custody may be intended by the Standards, and should be by the Court, to include juvenile cases in which a juvenile is in custody, which in the judgment of the Committee should have priority over opinions in other "Criminal" cases. However, the Standards do not reflect the need for expedition in child custody, abuse and neglect cases. In custody controversies, a long delay in the ultimate decision, while the child is in the custody of one or the other of the contending parties, virtually moots the case, since it makes it almost impossible, considering the ultimate interest of the child, to disturb that custody in the event the decision of the Superior Court is found to be erroneous. In abuse and neglect cases, the welfare of the child is seriously jeopardized so long as the ultimate decision is delayed. The number of such cases is not very large, but when they do come before the Court the Committee believes the opinions should be accorded a very high priority, and listed as such in Rule VIII-I.

Recommendation: The Court Study Committee recommends that Rule VIII-I be amended to place division opinions in criminal cases (with precedence to cases in which appellant is incarcerated and with further precedence to cases in which juveniles are incarcerated) above division and en banc concurrences or dissents.

- 41 -

Recommendation: The Court Study Committee recommends that Rule VIII-I add a category of child custody and child abuse and neglect cases and that they be assigned a high priority.

5. Release of Opinions

Other than in exceptional cases, and of course in cases decided by memorandum opinions not printed, counsel are not supplied with a copy of the opinion until it is printed, some days after it has been delivered to the Clerk. The warrant for this procedure is that corrections or changes are sometimes made on the printer's proof, so that it does not become the "final" opinion until the printing is complete.

The A.B.A. Standard in this area states "parties should be provided copies of a decision or opinion when it is filed, even if general dissemination is withheld until the opinion is in printed form." A judge should not deliver the opinion to the clerk until it is final and not subject to further editing. The clerk should make a copy immediately available to the parties.

Recommendation: The Court Study Committee recommends that parties be supplied with a copy of a decision or opinion as soon as it is received by the clerk, and before it is printed.

E. Administration

A serious problem exists in respect to the administrative service to the Court. Because of the present statutorily proscribed structure of the Joint Committee on Judicial Administration in which the Superior Court has three seats and the Appeal Court two seats, the Court Executive, who reports to that Committee, inevitably tends to be more responsive to the administration needs of the Superior Court. Administrative duties with respect to the Court of Appeals tend to be assumed by the Clerk. Planning and management of the Court's financial and housekeeping operations and related functions, while adequately done, are simply in the wrong place. Moreover, since, as noted below, the office of the Clerk is already overburdened, this adds to a general imbalance. For example, the Committee learned that one of the Court law clerks, who should be concerned with motions, has been taken from that work to assist the Clerk in screening cases.

Unless and until the Joint Committee problem is resolved, it is essential that the office of the Clerk, which has been reduced by four positions in recent years by reason of budget constraints, be more adequately staffed.

Recommendation: The Court Study Committee recommends that at least two more assistant clerks be added to the office of the Clerk of the Court of Appeals.

F. Caseflow Management

The standards emphasize strongly the need for court supervision and control of the preparation and presentation of all appeals through caseflow management procedures. The Court has a plan, written by the Clerk in 1975, which meets some but not all of the provisions which the Standards recommend. It does not cover all appeals (interlocutory appeals, agency cases and original proceedings are not dealt with). It was not established after consultation with the bar. Because the Court does not use an information form when the appeal is filed, the screening of cases does not occur until all briefs have been filed. And, finally, the existing plan has not been made public.

The Court Study Committee believes that the caseflow management plan of the Court is of equal concern to the Court and the parties who appear before it, and that it should be not only a matter of public knowledge, but that it should be subject to comment by the bar.

In the past eighteen months the D.C. Court of Appeals has initiated a promising new automated case docketing system. The system enables the Court, using a new mini-computer, both to automate and index substantial information on pending cases, as well as to generate managerial and statistical reports for use by the Courts.

While the Court is to be commended for employing the new automated docketing system to manage its caseflow more

- 44 -

effectively, a brief review of the system revealed potential areas of concern which in the view of the Court Study Committee warrant attention by the Court leadership. Adoption of major new procedures and systems in any organization require parallel management review and adjustment of previous lines of authority, paperflow procedures and internal responsibilities.

To a degree the Court has recognized this need, for a systems manager has been named to oversee the day-to-day operation of the new automated docketing system. While the new case docketing system will be of administrative and managerial use to many people in the Court, it is necessary at this stage that overall leadership responsibility for the system be clearly assigned within the Court.

Recommendation: The Court Study Committee recommends that the Court, after an opportunity for comment from the Bar, adopt and make public a caseflow management plan which will include all proceedings before it.

Recommendation: The Court Study Committee recommends that the Chief Judge clearly assign the overall management responsibility for the operation of the automated docketing system to the Clerk of the Court of Appeals. Consideration should also be given to a thorough management analysis of the Clerk's office, now that the new system is in place, to recommend to the Chief Judge a streamlined organization with necessary paperflow procedures and work responsibility changes identified.

PERSONS INTERVIEWED

1. Marsha Carey
Information Service
Federal Judicial Center
Washington, D.C.
telephone interview, February 11, 1980
2. Alan Chaset, Assistant to the Director
Research Division
Federal Judicial Center
Washington, D.C.
telephone interview, February 11, 1980
3. Judge John M. Ferren
D.C. Court of Appeals
personal interview, June 22, 1979
4. Robert Fiedler, Esq, Staff Attorney
Senate Subcommittee on Judicial Improvements of the
Senate Judiciary Committee
telephone interview, February 11, 1980
5. Judge George R. Gallagher
D.C. Court of Appeals
personal interview, June 25, 1979
6. Judge Stanley S. Harris
D.C. Court of Appeals
personal interview
7. Judge John W. Kern, III
D.C. Court of Appeals
personal interviews, June 15, 1979 and January 28, 1980
telephone interviews, February 11, 1980 and February 13,
1980
8. Judge Julia Cooper Mack
D.C. Court of Appeals
personal interview, June 29, 1979
9. Theodore Marvel
Appellate Justice Project
National Center for State Courts
Williamsburg, Virginia
telephone interview, February 11, 1980

Appendix A

- 46 -

10. Greg Mize, Staff Director
Judiciary Committee of the D.C. Council
personal interview, January 30, 1980
11. Judge Frank Q. Nebeker
D.C. Court of Appeals
personal interview, June 25, 1979
12. Chief Judge Theodore R. Newman, Jr.
D.C. Court of Appeals
personal interview, June 11, 1979
13. Senior Staff Attorney
U.S. Court of Appeals
10th Circuit Court
Denver, Colorado
telephone interview, February 11, 1980
14. Frank Siler
Office for the Improvement in the Administration
of Justice
Department of Justice - Main Office
Washington, D.C.
telephone interview, February 11, 1980
15. Alexander L. Stevas, Clerk
D.C. Court of Appeals
personal interview June 11, 1979
16. Michael Terpak
Budget Analyst
Office of Budget and Development, D.C. City Government
personal interview, January 14, 1980
17. Claire M. Whitaker
First Deputy Clerk, Planning Coordinator
D.C. Court of Appeals
personal interview, January 24, 1980
18. Ruby Weitzell
Court Monitor and CJA Clerk
Office of the Clerk
D.C. Court of Appeals
personal interview, January 24, 1980

BIBLIOGRAPHY

Annual Report, District of Columbia Courts, 1977 and 1978.

Appellate Court Caseweights Project, Research Division,
Federal Judicial Center, June, 1977.

Appellate Justice 1975: Volumes I-V,
Volume I - Summary and Background
Volume II - Quantity and Quality in Appellate Justice
Volume III - Criminal Justice on Appeal
Volume IV - Appellate Justice in the Federal Courts
Volume V - Supplement, Proceedings and Conclusions
The Advisory Council for Appellate Justice, National
Center for State Courts and the Federal Judicial Center,
January 23 - 26, 1975.

The Budget of the District of Columbia, FY 1980.

Central Legal Staffs in the United States Court of
Appeals: A Survey of Internal Operating Procedures,
Federal Judicial Center, April, 1978.

The District of Columbia Court of Appeals and the A.B.A.
Standards of Judicial Administration, Report to the
District of Columbia Judicial Planning Committee, December,
1977.

District of Columbia Court of Appeals: Workload
Problems and Possible Solutions, Report of Subcommittee
on the Workload of the District of Columbia Court of
Appeals, District of Columbia Judicial Planning Committee,
August 1979.

District of Columbia Criminal Code Revisions, Hearings
Before the Subcommittee on the Judiciary of the Committee
on the District of Columbia, House of Representatives
Proposed Revisions of the Criminal Code for the
District of Columbia, Serial No. 95-1, 1977.

Farmer, Larry C., Observation and Study: Critique
Recommendations and Federal Procedures, Federal
Judicial Center, December, 1977.

Goldman, Jerry, The Appellate Settlement Conference:
An Effective Procedural Reform, National Center for
State Courts, Winter 1978.

Internal Operating Procedures, District of Columbia Court of Appeals, January 1, 1978.

Meador, Daniel J., Appellate Courts: Staff and Process in the Crisis of Volume, Project of the National Center for State Courts, West Publishing Co., 1974.

"Procedure Changes for Appeals Courts are Proposed by United States to Reduce Backlog", Wall Street Journal, July 6, 1978.

Re, Edward D.; Chief Judge, U.S. Customs Court, Appellate Opinion Writing, Federal Judicial Center, March 1975.

Reducing the Time and Cost of the Appellate Process, Arizona Appellate Program Report, October 1976.

Silbert, Earl J., Statement on Tentative Report of the Subcommittee on the Workload of the District of Columbia Court of Appeals, District of Columbia Judicial Planning Committee, May 30, 1979.

Standards Relating to Appellate Courts, American Bar Association, 1977.

Standards Relating to Appellate Review of Sentences, American Bar Association, March 1968.

Standards Relating to Court Organization, American Bar Association, 1974.

Structure and Internal Procedures: Recommendations for Change, Commission on the Revision of the Federal Appellate System, Senator Hruska; Chair, June, 1975.

New Basic Criminal Code for the District of Columbia, District of Columbia Law Revision Commission Recommendation, Committee of the District of Columbia; House of Representatives, Ninety-Fifth Congress, Serial No. S-6, March 7, 1978.

Federal Courts Improvement Act of 1979, Committee on the Judiciary; United States Senate, Ninety-Sixth Congress, Serial No. 96-24, March-June 1979.

COMMITTEE REPORT

CIVIL TRIAL COURT REPORT
OF THE
D.C. COURT SYSTEM STUDY COMMITTEE
THE DISTRICT OF COLUMBIA BAR

Charles A. Horsky
Committee Chairman

Samuel F. Harahan
Staff Director

June 18, 1980

(55)

TABLE OF CONTENTS
CIVIL TRIAL COURT REPORT

	<u>Page</u>
INTRODUCTION	1
Section I Summary Comparison of Civil Operations -- Court of General Sessions and D.C. Superior Court	4
A. Calendaring and Case Dispositions	4
1. Jury Dispositions	5
2. Non-Jury Dispositions	7
B. Civil Division Management	8
C. Court Rules and Judicial Rotation	9
D. Trial Calendar	10
Section II Civil Caseflow Management	13
A. Case Management in the Civil Division	13
B. Case Movement Schedules	18
C. Discovery	23
D. Individual Calendar	24
Section III Motions Practice	27
A. Motions Disposition Delays	28
B. Non-Judicial Disposition	31
1. Rule 37 Motions and Unopposed Motions	31
2. Unopposed Collection Cases	33
C. Other Aspects of Motions Practice	36
1. Office of the Motions Commissioner	36
2. Telemotions	37

	<u>Page</u>
Section IV Civil Division Front Office Practice . . .	40
A. Case Jacket Management	42
B. Civil Division Procedures and Attorney Practice	49
C. Microfilming	51
Section V Voluntary Arbitration	54
A. Jurisdiction	58
B. Promotion	60
C. Court Rules	60
D. Appeals	61
E. Administration	61
F. Arbitrators	62
Appendix A - Persons Interviewed	64
Appendix B - Civil Division Calendar Survey	66
Appendix C - Civil Filings Sample Study	69
Appendix D - Bibliography	73

CIVIL TRIAL COURT REPORT

RECOMMENDATIONS

	<u>Page</u>
1. <u>Recommendation: The Court Study Committee recommends that the D.C. Superior Court be commended for the effective implementation of the 1970 D.C. Court Reform Act in making marked improvements in the time to disposition for civil jury trials over the earlier Court of General Sessions.</u>	7
2. <u>Recommendation: The Court Study Committee recommends that the Leadership of the D.C. Superior Court be commended for instituting the Divisional administrative head judge procedure, and believes it offers the potential for facilitating substantial management improvement in the Civil Division.</u>	8
3. <u>Recommendation: The Court Study Committee recommends that a procedure be implemented, to be used during the settlement conference, requiring counsel to give the Court additional information which will allow the judge and the Assignment Office to better predict pretrial settlement or disposition, and aid in the scheduling of cases.</u>	18
4. <u>Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Assignment Office employ an afternoon civil jury trial calendar as one means of lessening parties' in-court waiting time.</u>	18
5. <u>Recommendation: The Court Study Committee recommends the adoption by Court rule of a 150-day discovery timetable for all Civil II cases, and the establishment of a case schedule as of the date of issues are joined providing for further deadlines and a settlement conference.</u>	23
6. <u>Recommendation: The Court Study Committee further recommends that the Court adopt a restrictive Civil II continuance policy including requests for additional discovery time.</u>	23
7. <u>Recommendation: The Court Study Committee further recommends that settlement conferences be scheduled immediately after the close of discovery in Civil II cases.</u>	23

- | | <u>Page</u> |
|--|-------------|
| 8. <u>Recommendation: The Court Study Committee recommends that Rule 37 be modified to eliminate the need for motions to compel discovery, and to provide for automatic and significant penalties for the failure of a party to file any response to an opposing party's discovery request, including automatic entry of default, and further that continuances in the scheduled trial date, or the vacating of the imposition of sanctions, not be granted where discovery is not conducted in accordance with Court rules unless upon a showing of good cause.</u> | 24 |
| 9. <u>Recommendation: The Court Study Committee recommends that the Motions Commissioner forward the names of counsel frequently not in compliance with court rules, together with documentation of their infractions, to the Board on Professional Responsibility, the disciplinary arm of the D.C. Bar, for censure or other appropriate disciplinary action. The Committee suggests that one appropriate disciplinary action might be required attendance at a series of continuing legal education classes on Superior Court Civil Division practice.</u> | 30 |
| 10. <u>Recommendation: The Court Study Committee recommends that the Motions Commissioner be empowered to act on routine unopposed motions. The Committee believes that criteria can be developed by the Court through the rules process to guide the Motions Commissioner in this area.</u> | 32 |
| 11. <u>Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Motions Commissioner be empowered to rule on Motions to Compel Discovery (Rule 37), where they are deemed to be of an uncomplicated nature, or where the Rule 37 motions are grounded on a complete failure of counsel to respond to discovery. Such rulings would be appealable to the motions judge.</u> | 32 |

- | | <u>Page</u> |
|---|-------------|
| 12. <u>Recommendation: The Court Study Committee recommends that complete failure of a party to provide discovery pursuant to the Superior Court's Civil Division rules shall subject a person who so fails to the automatic imposition of sanctions under Court Rule 37 (G)(2)A-E. Such rulings or impositions of sanctions may be appealed by the aggrieved party, for good cause shown, followed by an explanation as to why there was a failure to comply with discovery requests, or showing that good faith attempts at compliance with discovery requests were made.</u> | 33 |
| 13. <u>Recommendation: The Court Study Committee recommends that the statutory ceiling in small claims cases be increased to \$2,500. It is also recommended that provision be made to permit further subsequent adjustments to the small claims ceiling by Court rule rather than by separate legislative action.</u> | 35 |
| 14. <u>Recommendation: The Court Study Committee recommends that the Superior Court Civil Division judicial leadership implement a pilot program using a telephone conference call procedure to hear oral arguments in selected opposed motions for an eighteen month test period. The A.B.A. Action Commission to Reduce Court Costs and Delay may be an appropriate funding source for implementing such a pilot program.</u> | 38 |
| 15. <u>Recommendation: The Court Study Committee recommends that the Superior Court judicial and managerial leadership give serious consideration to the institution of a Civil Division central case jacket file system in which access to the individual jackets would be limited to judges. All other court, attorney and public need for the case jacket information would be met through a competently maintained case jacket microfilm system. Attorney access to the Civil Division central file area would be severely limited if not prohibited.</u> | 45 |

16. Recommendation: The Court Study Committee recommends that consideration be given by the Court to inservice training of Civil Division personnel relating to the proper functioning of the case jacket file operation. Such training should include clear explanation of the adverse effect that their activities may have on the legal rights of litigants if those activities are not handled properly, and explanations on the nature of the documents they handle, and the impact of these documents on the flow of cases through the Division.

46

In an attempt to assure the utility of this inservice program it is further suggested that the D.C. Bar's continuing legal education program assist the Court in planning such an activity. It should also be noted that Catholic University Law Review (Vol. 26, Summer 1979, number 4), has published a highly useful Attorney's Guide to Courthouse Practice and Procedure: Civil Division, D.C. Superior Court in active cooperation with Superior Court Civil Division staff and judges. This guide should be widely available to court personnel and attorneys alike.

17. Recommendation: The Court Study Committee recommends that a management study be conducted of the Civil Division filing counter operation with the objective of streamlining the filing of documents. Consideration should be given to combining the filing clerks and cashier functions at this location to make more efficient use of both Court staff resources and attorney time. The management study should seriously examine the existing cumbersome and time consuming Divisional practice of hand stamping documents as they are filed; and explore use of modern technology to accomplish many of the present manual operations.

48

- | | <u>Page</u> |
|---|-------------|
| 18. <u>Recommendation: The Court Study Committee recommends that the Civil Division Adopt an "at risk filing procedure for no fee filings where person would not be required to stand in line to file a document. The Civil Division should provide an "at risk" date stamp machine at this filing location to enable persons to self-stamp the pleading in the event of later question as to the date of court filing.</u> | 49 |
| 19. <u>Recommendation: The Court Study Committee recommends that the Civil Division Chief Clerk develop single sheet information hand-outs, with assistance as needed from the appropriate Bar Divisions, on frequently occurring attorney filing errors.</u> | 51 |
| 20. <u>Recommendation: The Court Study Committee recommends that the Civil Division leadership review existing filing procedures and policies to make them consistent to the extent practical. The Court should also develop a heightened awareness of the impact of frequent changes in minor filing procedures on the practicing bar.</u> | 51 |
| 21. <u>Recommendation: The Court Study Committee recommends that the continuing education committee of the D.C. Bar consult with the Superior Court Civil Division leadership to determine how the Bar can assist in improving attorney knowledge and compliance with court procedures.</u> | 51 |
| 22. <u>Recommendation: The Court Study Committee recommends that a central microfilming center be established in the Courthouse, to provide microfilming services to all divisions.</u> | 53 |
| 23. <u>Recommendation: The Court Study Committee recommends an 18-month pilot project of voluntary arbitration be implemented by the D.C. Superior Court.</u> | 58 |

- | | <u>Page</u> |
|---|-------------|
| 24. <u>Recommendation: The Court Study Committee recommends that the arbitration program be available to litigants in Civil cases. The request may be made at the time a complaint or an answer is filed and may be made as to some, or all, of the issues in the case. If either party objects or refuses to submit to arbitration, the case is carried on the court calendar in the regular manner.</u> | 60 |
| 25. <u>Recommendation: The Court Study Committee recommends that the D.C. Bar work closely with the Civil Division in promoting the voluntary use of arbitration, and in monitoring and refining the operation of the program.</u> | 60 |
| 26. <u>Recommendation: The Court Study Committee recommends that Superior Court Civil Rule 40-1(e) be amended to provide continuances without the necessity of court appearances, where the parties have agreed to submit to arbitration.</u> | 61 |
| 27. <u>Recommendation: The Court Study Committee recommends that Superior Court Civil Rule 40-1(b) be amended to provide priority for actions to confirm arbitration awards.</u> | 61 |
| 28. <u>Recommendation: The Court Study Committee recommends that for the purpose of the pilot voluntary arbitration program, an administrator be appointed by the Chief Judge to oversee the operation of the arbitration program.</u> | 62 |
| 29. <u>Recommendation: The Court Study Committee recommends that a three arbitrator panel system be used in any pilot program, but that the parties may stipulate to a single arbitrator.</u> | 62 |

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in respect to the Civil Division of the Superior Court. The purpose of the Court Study Committee has been to assess the impact and the changes resulting from the enactment of the 1970 D.C. Court Reform and Criminal Procedures Act and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. court system leadership, and to the community. The D.C. Court System Study Committee, chaired by Charles A. Horsky, is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Civil Subcommittee was responsible for the principal investigative and analytic work leading to the Court Study Committee's draft findings and recommendations in this area. Subcommittee members Rufus King III, Thomas C. Green, Daniel A. Rezneck, R. Kenneth Mundy, Gerald M. Green, and William A. Bradford, Chair, were assisted in the drafting of their report by staff members of the Court Study Committee, Samuel F. Harahan, staff director, and Jeffrey M. Sherman, staff research analyst.

The Court Study Committee examined the operation of the Superior Court in order to achieve a meaningful comparison

- 2 -

between the present Civil Division and the pre-1971 D.C. Court of General Sessions, and in order to make recommendations concerning present operations of the Superior Court Civil Division which, in the judgment of the Committee, bear further procedural, policy, or statutory attention and reform.

The Committee is very appreciative of the time and interest of the many judges and supporting Civil Division Clerk's office staff in the course of preparing this report. The Committee also appreciates court assistance in undertaking statistical studies and other data collection activities.

The report which follows is divided into five separate sections. The first provides an overview of local trial court civil jurisdiction and operations in the District of Columbia over the past fifteen years; sections two through five concern aspects of present operations of the Superior Court Civil Division, and contain constructive recommendations for further improvement in the administration of civil justice in this community. More specifically, Section Two of the report addresses caseload management, Section Three motions practice, Section Four front office practice, and Section Five voluntary arbitration.

In developing its findings and recommendations, the Court Study Committee had the benefit of all the historical records and files of the Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit. This D.C. Circuit Judicial Council ad hoc Committee

- 3 -

on the Administration of Justice, chaired by Newell W. Ellison (the "Ellison Committee"), used a professional court management study team to examine the local courts and related agencies in the District of Columbia during the period 1966 to 1970. The materials of the Ellison Committee have been an invaluable resource in understanding the operation of the courts of the District of Columbia during the 1960's, and the Court Study Committee has relied on these papers for much of the historical discussion contained in this report. Additionally, the Committee had access to a 1979 caseflow analysis pertaining to Superior Court which was performed under contract from the Court by a private social science organization, as part of an overall court delay reduction project. These materials have been useful to the Committee in developing its report findings.

- 4 -

SECTION I SUMMARY COMPARISON OF CIVIL OPERATIONS -- COURT
OF GENERAL SESSIONS AND D.C. SUPERIOR COURT

The 1970 D.C. Court Reform Act created the D.C. Superior Court by combining the Court of General Sessions and Juvenile Court, and transferring to the new court all major local criminal and civil jurisdiction from the U.S. District Court for the District of Columbia. Before its enactment almost all major local civil jurisdiction was in the federal court. The passage of the 1970 D.C. Court Reform Act was given impetus by detailed studies, data, and major findings published by the Ellison Committee.

A. Calendaring and Case Dispositions

One of the Ellison Committee's fundamental concerns related to the haphazard division of civil jurisdiction between the Court of General Sessions and the U.S. District Court. Under the statutory authority then in effect, the Court of General Sessions had jurisdiction over all local civil actions where the amount in controversy was \$10,000 or less -- this was raised from \$3,000 to \$10,000 in 1963 concurrently with the raise in federal jurisdiction at that time.

Federal judges during the mid-to-late 1960's certified cases to the D.C. Court of General Sessions when they believed that the amount demanded had been inflated unjustifiably above \$10,000. This practice of transferring often hundreds of "borderline" cases to the Court of General Sessions exceeded the capacity of that Court to manage its civil calendar.

A review of interviews with General Sessions Civil Division judges conducted at that time by the Ellison Committee reveals serious concern about both the lack of control and predictability of the civil calendar, and the absence of effective management by the Court's leadership. Intolerable case delays of two years on average were cited as a major deficiency in the Court of General Sessions' civil operations. Part of this problem was traced to separate jury and non-jury calendars each of which required totally different scheduling procedures and judicial and support staff patterns. The practice of organizing the Court of General Sessions Civil calendar in terms of jury/non-jury rather than on the basis of case complexity made court control of the flow of litigation difficult to attain. In short, there was no court control or predictability with respect to case disposition times.

1. Jury Dispositions

The establishment, subsequent to the implementation of the 1970 D.C. Court Reform Act, of one calendar for the more complex civil cases and a second calendar for simpler civil cases (other than small claims, and landlord and tenant) flowed from the logical conclusion that like cases be handled procedurally in a similar manner. Thus, the more complex civil cases (Civil I) are handled on an individual calendar basis, while the less complex cases (Civil II) are processed in a more routine fashion. It clearly appears from comparing aggregate statistics of the Court of General Sessions during

- 6 -

the period 1963-1968 with similar data from the Superior Court that the desired result of achieving overall faster dispositions has been reached. Regarding disposition time in civil jury cases from the joining of issue to disposition, the following statistics are illustrative:

Comparative Caseloads and Disposition Times of Civil Jury Trials - General Sessions vs. D.C. Superior Court

<u>General Sessions</u>			<u>Superior Court</u>		
<u>Year</u>	<u>Numbers of Jury Dispositions, and Average Months from Issue to Disposition</u>		<u>Year</u>	<u>Numbers of Jury Dispositions, and Average Months from Issue to Disposition</u>	
1963	1521	(4)	1973	2719	(7)
1964	1455	(8)	1974	3021	(8)
1965	1676	(16)	1975	3336	(8)
1966	1574	(19)	1976	2840	(12)
1967	1797	(23)	1977	3621	(12)
1968	2087	(24)	1978	3256	(11)

(Source: 1976 Annual Report of the Courts of the District of Columbia; Ellison Committee, Working Papers, Study of Civil Caseflow in the Court of General Sessions)

As the above data indicates, the D.C. Superior Court Civil Division achieves almost twice as many jury dispositions each year in about half the time when compared with the Court of General Sessions. Clearly, the Congressionally enacted 1970 D.C. Court Reform Act has improved the pace of jury dispositions, even in the face of substantially greater numbers of cases. Since the General Sessions Court did not have major local civil jurisdiction a comparison of the jury disposition times before and after the 1970 D.C. Court Reform Act,

- 7 -

must also include mention of similar data on the Federal District Court. The general trend in the U.S. District Court was for longer delays in civil jury disposition times in the 1963-1968 period very similar to the preceding data on the Court of General Sessions.

The final data issue in the comparison of average times for civil jury dispositions before and after the Court Reform Act, involves the relative judicial resource levels for the General Sessions Court Civil Division with the similar division in the Superior Court. With a number of basically minor qualifications, the number of judges sitting in the Superior Court Civil Division is roughly comparable to the number of judges assigned to the General Sessions Civil Division. The one major difference in this regard is that Civil Division judges in the General Sessions Court were routinely reassigned to meet criminal caseload "emergencies", and this reshuffling is rarely done since the new Act.

Recommendation: The Court Study Committee recommends that the D.C. Superior Court be commended for the effective implementation of the 1970 D.C. Court Reform Act in making marked improvements in the time to disposition for civil jury trials over that in the earlier Court of General Sessions.

2. Non-Jury Disposition

Unfortunately, Court of General Sessions and Superior Court non-jury disposition data, on a comparable basis, could not be located by the Court Study Committee. However, the Ellison Committee research materials reveal an average

- 8 -

civil non-jury disposition time of 3.5 months in 1968. This figure increased to approximately 8 months in 1970, according to Superior Court reports.

If these data are valid, then the comparison with Superior Court Civil Division non-jury dispositions 1973-1978 is not entirely favorable. During the 1973-1978 period the average disposition time between joining of issue and disposition in non-jury cases grew from 2.5 months to over 8.5 months. The Civil Division of Superior Court does however work on a single calendar for both jury and non-jury cases. This procedure has probably been a factor in the decrease in civil jury trial disposition times, although improvement in the pace of non-jury dispositions is obviously still needed.

B. Civil Division Management

The inordinate delay in civil cases in the Court of General Sessions was found by the Ellison Committee to result from the absence of meaningful caseload management. Significant strides in that direction have now been made by Chief Judge H. Carl Moultrie I, through his creation in 1978 of the position of administrative head judge of the Civil Division. This step has greatly facilitated communication within the Civil Division and appears to be a marked improvement over the leadership methods used previously.

Recommendation: The Court Study Committee recommends that the leadership of the D.C. Superior Court be commended for instituting the Divisional administrative head judge procedure, and believes it offers the potential for facilitating substantial management improvement in the Civil Division.

C. Court Rules and Judicial Rotation

A review of interviews of Court of General Sessions judges and others conducted by the Ellison Committee staff also reveals that there was little enforcement of that Court's rules of civil procedure. Several judges specifically recommended more enforcement and more compatibility with the Federal Rules of Civil Procedure.

Since the passage of 1970 D.C. Court Reform Act the rules pertaining to the Civil Division have, for the most part, closely tracked the Federal Rules of Civil Procedure with some minor variations to fit local practice. The Court Study Committee believes that this has greatly contributed to the improvement of operations of the Civil Division in Superior Court; yet some rules need further reform. Later sections of this report identify those rules which the Committee believes warrant modification.

Another problem contributing to poor efficiency which was identified by the Ellison Committee was the monthly rotation policy of Civil Division judges. The Ellison Committee found this rotation policy dysfunctional for the effective operation of the Civil Division. While the 1970 D.C. Court Reform Act addressed this issue in part by providing that rotation of judges be in accordance with court rule, it was not until 1978 that judges were specifically assigned to the Civil Division for longer than one month. With the appointment of Chief Judge Moultrie, judges' divisional assignments

- 10 -

were set at six months. The longer terms for judges in the various divisions of the Superior Court, and certainly in the Civil Division, has had a most beneficial effect, and the Court is to be commended for this relatively simple, but important procedural improvement. Finally, the practice in General Sessions Court of routinely "borrowing" civil judges appears now to have been corrected and alleviated by an increase in the total number of local judges pursuant to the 1970 D.C. Court Reform Act.

In contrast, there does seem to be a judicial support problem relating to staff reassignments which is continuing to affect adversely the Superior Court Civil Division. It appears that Civil Division support staff are very frequently redeployed within the Civil Division from their assigned positions with the result of continuing inefficiency in operations.

D. Trial Calendar

One particular problem which the Ellison Committee noted and which, in the view of the Court Study Committee, is still troublesome is the apparent inability of the Civil Division to reach all cases set for trial on a particular day. The mismatch of cases to available judges continues to waste the time of attorneys, witnesses and the Court. The passage and initial implementation of the 1970 D.C. Court Reform Act did not resolve the over-calendaring practice in the Civil Division of Superior Court. Numerous civil practitioners consulted by the Court Study Committee related their personal

- 11 -

experience with delay, postponement and unnecessary attendance at Court. The Committee conducted a statistical sample of the Civil Division daily calendar for an 18 month period between 1978 and 1980. The study demonstrates that the Civil Division is able to reach approximately eighty-four percent of the cases set for trial each week. For this 18 month period, however, the Civil Division was able to reach all Civil II cases set for trial on any particular day only fifty percent of the time. Subsequent sections of this report will identify aspects of civil division caseload management and calendaring which in the judgment of the Committee need further reform.

In summary, when comparing the Civil Division operations of the Court of General Sessions with those of the Superior Court, the Court Study Committee believes that the overall impact of the implementation of the 1970 D.C. Court Reform Act on civil practice has been positive. The Superior Court's structure as a single-tier trial court of general jurisdiction appears to have been a constructive improvement in the administration of justice for citizens of the District of Columbia.

The Court Study Committee is also heartened by the interest and commitment of the D.C. Court's leadership in seeking out additional ways to further improve the D.C. court system. The following sections of this report set forth a number of specific findings and recommendations for further improvement. The Committee believes that implementation of

- 12 -

these additional recommendations will make greater progress possible.

SECTION II CIVIL CASEFLOW MANAGEMENT

With the implementation of the 1970 D.C. Court Reform Act, many important reforms have been instituted in the administration of Superior Court Civil Division business. The preceding section referred to several items which directly relate to the management of the civil caseflow, including the introduction of separate calendaring methods based on case complexity (the Civil I and Civil II area), longer assignments for judges to the Civil Division, and others. The following section addresses civil caseflow management, and considers such areas as the voluntary settlement conference procedure, discovery, case management schedules, and the individual calendar.

A. Case Management in the Civil Division

The pressure on the Civil Division of the Superior Court, generated over the past six years by constant increases in the number of new filings, has not significantly abated, despite a stable number of judges assigned to the Division over the past several years. However, although statistical data confirms that the Civil Division is still confronted with an enormous number of cases, it is not losing ground -- primarily, it would appear to the Committee, as a result of increased effort by members of the Court.¹

¹ A study of projected caseloads in the Civil Division, conducted by the Whittier College School of Law Court Delay

(footnote cont'd)

- 14 -

Cases filed in the Civil Division are classified as either Civil I or Civil II. This classification is based on case complexity and other factors, and is done either as a result of a request by either party by motion, or following a screening process conducted in the Clerk's office, with some case-by-case judicial review. Cases classified as Civil I are assigned to one judge for all subsequent court proceedings. (This procedure is called the individual calendar.) Judicial assignments to Civil I are for a period of eighteen months, probably the minimum necessary for achieving effective case management in complex cases. The present caseload level per judge in Civil I compares favorably with the caseload of 1973 pending cases per federal judge in the U.S. District Court for the District of Columbia.² With the present and foreseeable assignment of three judges to Civil I, each of whom carries a load of approximately 150 cases, only a small percentage of new filings can be diverted to the individual calendar system.

The case pressure on the Civil Division therefore stems primarily from the bulk of smaller, often less complex civil cases, categorized as Civil II. Cases classified Civil

(footnote cont'd)

Project, anticipates approximately 16,000 civil filings in 1979, of which 39% (6300) would proceed with issue joined, compared with 14,603 filings in 1978, of which 37% proceeded with issue joined (1978 Annual Report of the D.C. Courts).

² The pending caseload level per federal judge in this district is exceeded in 90 of the 94 federal districts.

- 15 -

II are handled by different judges depending on the stage of the proceeding. (This procedure is called a master calendar.) The number of judges assigned to Civil II has been maintained during the past several years at six or seven. The former Court of General Sessions procedure of temporary reassignments of judges to meet crises in other divisions of the Court has now been virtually eliminated. While each judge is assigned to the Civil Division for six months, judges carry a specific Civil II assignment for six weeks. In the course of their overall Civil Division assignment, each judge will preside over a mix of small claim jury trials, landlord/tenant jury trials, jury and non-jury civil actions, and settlement conferences. Other judges (not Civil II) are assigned to small claims and landlord/tenant calendar control, and to pretrial.

At present the Civil Division is using a settlement conference to achieve rather dramatic results in expediting caseload. These conferences serve the important purpose of formally encouraging communication between the parties of a suit before the actual trial. The Civil Division assignment office schedules Civil II jury cases for a settlement conference if the case has not previously been pretried or set for pretrial pursuant to Civil Division Court Rule 16. The objective is to conduct a conference for the purpose of determining if settlement before trial is possible. These conferences, attended by counsel for all parties, are held forty-five to ninety days before the scheduled day of trial.

The volume of cases handled in settlement conferences is approximately 30 conferences per day, with an allocation of 12 minutes per conference. While no exact figures are available, it appears that over 50% of the conferences are conducted on schedule. These settlement conferences are before a judge, and this procedure occupies approximately two weeks of a judge's six-week Civil II term. When the settlement conference judge is not performing this function he/she is otherwise available for regular trial assignment.

Rough figures indicate a settlement rate at the settlement conference of about 37%, and, although it may be premature to conclude that dispositions will continue at this level, we think it clear that forced confrontation between counsel and early familiarization with the case can lead to compromise and termination of the controversy prior to trial.

One measure of the ability of the Civil Division to meet and dispose of its caseload is its ability to accommodate those cases set for trial on any particular day. Trial dates for Civil II jury cases are scheduled approximately one year after the case is at issue. The same period presently pertains for non-jury trials, although the interval has been as low as 8-1/2 months for significant portions of the past year. As noted before, this particular disposition rate does not compare favorably with disposition times of non-jury cases in General Sessions.

- 17 -

According to the 1978 Annual Report of the District of Columbia Courts, 59% of all civil jury cases were settled prior to Court hearing. Of the remaining 41% which were disposed of by some type of Court intervention or activity, only 6% were actually tried. The corresponding data on civil non-jury dispositions indicates that 57% were settled prior to Court hearing and that only 10% of the non-jury cases were disposed of by trial.

Cases remaining on the trial calendar on the day of trial are dispatched to the available trial judge on the basis of priority system that favors cases that were not sent to a judge on the original assigned trial date and those cases where out-of-town witnesses have been identified. Cases involving preliminary injunctions where temporary restraining orders are in effect, when sent to the assignment office from the calendar control judge, also receive priority, as do those cases where priority is ordered for a variety of reasons.

While we have already noted that the Civil Division's statistical disposition rate appears favorable, i.e., the Division reached every case but two, or one, on seventy-five percent of the days sampled and reached an average of 84% of the cases set for trial on the day of trial, further improvement can be effected.

The current calendaring practice is to set Civil II cases for trial on a given day at either 9:30 A.M. or 1:30 P.M. The Court should take steps to further divide the daily

- 18 -

calendar into reasonable segments to reduce the waiting time of parties, and should consider setting jury cases as well as nonjury cases on the afternoon trial calendar. The Court Study Committee makes note of the helpful assistance of the Civil Division Assignment Office staff in permitting attorneys to be "on-call" on the day of trial, so as to minimize all parties' in-court waiting time.

Furthermore, better allocation of judicial resources and case loads would be possible if the Civil Division assignment office were in possession of information pertaining to the estimated length of trial and the likelihood of settlement. It would appear that the most appropriate opportunity for the Court to attain this highly useful information from opposing counsel in individual cases is at the settlement conference.

Recommendation: The Court Study Committee recommends that a procedure be implemented to be used during the settlement conference, requiring counsel to give the Court additional information which will allow the judge and the Assignment Office to better predict pre-trial settlement or disposition, and aid in the scheduling of cases.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Assignment Office employ an afternoon civil jury trial calendar as one means of lessening parties' in-court waiting time.

B. Case Movement Schedules

At present, the pace and conduct of civil cases in the D.C. Superior Court is left largely in the hands of counsel. If there is absence of motivation by counsel to attend to their case, pursue discovery and explore compromise,

- 19 -

very little case disposition impetus is generated by the Court, at least prior to any settlement conference or pre-trial, which typically occurs close to the trial date. Confrontation between opposing counsel with the related forced familiarization with the case file through the Court's settlement device is apparently producing considerable benefit, as evidenced by the recent 35% and higher case disposition rate at that point. The problem, in the view of the Committee, is that under current procedures, where settlement conferences are scheduled close to trial, cases, which could be disposed of much earlier, remain in the litigation process too long. The Committee believes that by requiring Counsel to attend to the case at the early stages of litigation even more and faster dispositions and settlements will be produced without as much judicial intervention -- thereby enhancing the prospect that all cases set for trial on any particular day can be reached.

The procedures suggested are both simple in execution and economical, in that they are not dependent upon the availability of additional judges. The core proposal is that a schedule or timetable be imposed on the conduct of every Civil II case which would: (i) establish a discovery cut-off date; (ii) establish a deadline for filing motions for summary judgment, or other dispositive relief (if any); (iii) establish a date for a settlement conference or pretrial; and (iv) establish a trial date. The timetable envisioned would commence

- 20 -

as of the date the issues are joined. A new Civil Court Rule, or amendment to existing Court Rule 26, would require that all discovery be completed within 150 days. The remaining components of the timetable, i.e., motion filing date, settlement conference date and trial date would be set by the Civil Division assignment office on its master schedule, after the filing of an answer. In recommending a set schedule approach to the litigation of the bulk of civil cases in the Superior Court Civil Division, the Committee is assuming that the more complex civil cases will still be diverted to Civil I, where the utmost flexibility to tailor a schedule for such cases will be preserved.³

We anticipate that putting all Civil II cases on an identical and faster track will cause some increase in requests (by motion) for continuances and increased incidents of discovery disputes. Nevertheless, as mentioned above, significant numbers of cases are already falling out of the system without any judicial intervention, and if continuances are sought or discovery contested in the remaining cases, there is no empirical data at present to suggest that additional motions could not be absorbed by the present machinery. In this regard it is important to note that a secondary objective

³ See discussion regarding discovery timetables in the Justice System Journal, Volume 4/2, Winter, 1978 at pages 147-155. Experience may demonstrate that additional time is needed, or additional time may be appropriate for the first six to twelve months of operation to facilitate adaptation. In the end it may be practical to shorten the period.

- 21 -

should be a restrictive policy on continuances, including requests for additional discovery time. The expectation ought to be fostered that continuances, except for exceptional cause, will not be granted and that counsel must adhere to the established timetable. The Ellison Committee Report stated that the leniency demonstrated by the Court of General Sessions in granting continuances was a major contributing factor to delay, and that up to one-half of all cases scheduled for a trial had been previously continued at least once. Chronic, repetitive continuances forced the Court of General Sessions to carry civil cases for inordinate lengths of time, thereby directly contributing to delay. While the practice has been curtailed in the Superior Court, resetting cases solely on request of counsel is still a problem. The policy of minimal continuances should also be applied with respect to the filing of answers, which are frequently delayed by agreement of counsel without court approval.

The Court Study Committee has no way of measuring or comparing the amount of discovery undertaken in Civil II cases. The Committee, however, did conduct a sample survey of civil filings in 1975, 1976 and 1977. The study revealed that about 63% of all civil filings were contract cases, and that the amount in controversy in 68% of all civil filings was less than \$4,000 and less than \$10,000 in 75% of the filings. The expected amount of discovery in these cases (including tort cases), based on the Committee's aggregate experience, should

- 22 -

not require more than 150 days for completion. Accordingly, once counsel appreciate that discovery continuances will rarely be granted, cases will proceed faster, and not at the expense of preparation or with undue hardship to counsel.

The adoption of a set timetable will not only accelerate the pace of all cases and permit earlier trial dates, but it will also require attorneys to familiarize themselves with the relative strengths and weaknesses of opposing positions. The Committee feels that attention to the case in the initial stages will ultimately produce dividends in the form of settlement or other concessions. Moreover, there are persuasive reasons for scheduling the settlement conference within a short time of the conclusion of discovery and any hearings on dispositive motions. With the facts in hand and with the possibility of avoiding further litigation expense, the likelihood that a compromise can be reached at this time with participation by the court is probably as great, or even greater, than the likelihood of settlement on a date closer to trial.

In summary, if counsel can be forced to focus on the case at a pace determined by the Court, and if they are then brought together in a context where settlement discussions can occur with the Court, the Committee believes that faster resolution of cases on the civil calendar will be accomplished either through compromise, preliminary ruling by the Court, or through other concessions made by counsel short of trial. But

- 23 -

even without the settlement conference, the Committee believes that the faster track will itself induce substantial communication between counsel and early assessment of the merits of the case, all of which should increase the rate of fallout of cases from the system.

Recommendation: The Court Study Committee recommends the adoption by Court rule of a 150-day discovery timetable for all Civil II cases, and the establishment of a case schedule as of the date issues are joined providing for further deadlines and a settlement conference.

Recommendation: The Court Study Committee recommends that the Court adopt a restrictive Civil II continuance policy including requests for additional discovery time.

Recommendation: The Court Study Committee recommends that settlement conferences be scheduled immediately after the close of discovery in Civil II cases.

C. Discovery

It is difficult to determine whether abuse of the discovery process is epidemic and/or whether it is materially impeding case flow in the Civil Division. While present data available to the Committee does not reveal the number of motions to compel filed on an annual basis, the motions commissioner estimates that somewhere between 30 and 40 orders pertaining to discovery matters are entered each month. Of these, approximately 95% are necessitated by the failure of counsel to file any answers at all to interrogatories, and in only a few instances are penalties assessed against the delinquent lawyer or party.

- 24 -

At the very least, it is apparent that upwards of 30 cases each month are delayed as a result of the failure of counsel to comply with discovery requests on a timely basis. Without further data the Committee is unable to correlate these delays with subsequent requests for continuances; yet we suspect that additional time required to complete discovery is a ground often cited for relief. Since cases continued are obviously a cause of backlog, it would seem prudent to adopt a measure which will minimize discovery abuse as a contributing factor.

Recommendation: The Court Study Committee recommends that Rule 37 be modified to eliminate the need for motions to compel discovery, and to provide for automatic and significant penalties for the failure of a party to file any response to an opposing party's discovery request, including automatic entry of default, and further that continuances in the scheduled trial date, or the vacating of the imposition of sanctions, not be granted where discovery is not conducted in accordance with Court rules unless upon a showing of good cause.

D. Individual Calendar

The 1968-1970 Ellison Committee court management study, at several points in their research, examined different calendaring procedures. In interviews with judges of the Court of General Sessions at that time, it was noted that some benefit might be derived from instituting an individual calendar in the General Sessions Civil Division. At the time, one was being considered for the U.S. District Court, which was also experiencing intolerably long civil delays. An individual calendar was subsequently introduced in the U.S. District

- 25 -

Court despite strong opposition by some judges. Subsequent reports demonstrate a widespread acceptance of the individual calendar by U.S. District Court judges. It must be noted, however, that the U.S. District Court's case load per judge was considerably less than that of Civil Division D.C. Superior Court judges at the time of the Committee's research in 1979-80.

Despite suggestions that backlog and civil case management could be improved by using an individual calendar system, the Committee believes that present case load levels make any such arrangement unworkable. Federal judges in this District now carry a load of approximately 270 filings. In the Superior Court, if cases were assigned to individual Civil II judges after filing, each judge would carry over 2,200 filings. Even if cases were assigned after the filing of an answer, each judge would carry approximately 1,000 cases. The six-week judicial assignments to Civil II also would only compound the problem.

Thus, to implement an individual calendar, considerable reallocation of resources and additional support staff would be required; yet the Committee has no expectation that the funding necessary to achieve wholesale reorganization is possible. Additionally, there appears to be little sympathy among the Superior Court Civil Division judges for an individual calendar system for Civil II cases. If both Civil I and Civil II cases were on an individual calendar, the other

- 26 -

judges assigned to Civil II would necessarily remain in less desirable assignments for a longer period of time. For these reasons the Committee believes that a Civil II individual calendar is not a viable alternative at present.

SECTION III MOTIONS PRACTICE

Effective motions practice in civil cases is considered by many attorneys and judges to be the heart of civil litigation. Motions are filed with the Court throughout the progress of a civil case and involve such varied areas as motions to dismiss, motions for summary judgment, motions to vacate a judgment, numerous different motions relating to discovery, motions to compel deposit in the registry of the court, and other types of motions.

Neither the Ellison Committee study of the Court of General Sessions nor the 1970 D.C. Court Reform Act dealt explicitly with motions practice. The only reference to motions procedures the Court Study Committee could find in the Ellison Committee report was a notation that civil motions in the Court of General Sessions were subject to almost whimsical and wholly unpredictable alterations and interpretation by the Court. Motions practice in the D.C. Superior Court Civil Division is carried out in relation to extant court rules and policies.

With the implementation of the 1970 D.C. Court Reform Act in the civil area, and the concomitant rise in filing levels and workloads, over the Court of General Sessions, came the introduction of a motions screening function within the Superior Court Civil Division, the Motions Commissioner. The office of the motions commissioner receives all Civil II motions filed with the Division, some 1,200 a month, and screens them for the judges to assure that they are filed in

- 28 -

accordance with the Court's rules and policies. In addition to screening filings, returning to counsel those that are not in compliance with rules, and disposing, or setting for hearing, those motions at issue, the motions commissioner's office spends a good deal of time answering inquiries about court rules, practice, etc., and searching for jackets. The calendaring of any court hearings or activities relating to scheduling judicial hearings on motions is the responsibility of the civil assignment office, and not the duty of the motions commissioner.

A. Motions Dispositions Delays

Data supplied the Court Study Committee by the Superior Court on the workload of the motions commissioner's office reveal that each month of the approximately 1,200 filings, in which half are motions and the balance oppositions to motions, some 316 are decided without a hearing; 112 motions are scheduled for hearing by the motions judge; and 108 are rejected for failure to conform to the Court rules.

The office of the motions commissioner handles a high volume of filings, and other important collateral matters with a staff of only five people. One of the most critical problems in the civil motions area as perceived by the Court Study Committee was not one of quality (viz., the correct decisions on the handling of motions were usually made), but one of quantity, or at least of delays that in many instances can be attributed to the number of papers being handled by the

- 29 -

motions commissioner's office. Several Committee members had direct personal experience with, and had heard from attorneys practicing in the Superior Court Civil Division about inordinate delays in the disposition of motions.

There are several possible explanations for motions disposition delays. Most stem from time spent by the Civil Division commissioner's staff due to the delinquency of others:

- time spent by the motions commissioner's office answering questions on the telephone from attorneys on the rules of the court, most of which questions could be answered by reading the Court rules;
- time spent by the Court staff returning to lawyers, by mail, filings that do not conform to the rules of the Court in that, for example, they lack a memorandum of points and authorities, or lack a proposed order;
- time spent by the motions commissioner redrafting proposed orders that do not use language suitable for orders;
- time spent by the Court staff gathering and typing on orders the names and addresses of all parties to be served because counsel submitting the order did not comply with the (admittedly new) rule requiring him to do so;
- time spent processing motions drafted for judicial action which, according to Local Rule 77-II, could have been drafted so that the clerk could grant the motion;
- time spent locating misplaced jackets;
- delay caused by the microfilming procedure, which calls for motion papers to be microfilmed before they are sent to the assignment office to be set for hearing. (The Committee takes note of the Court's recent statement that microfilming has been current for the past several months.)

- 30 -

No bureaucratic system should assume that it is operating in a world where all the rules are obeyed. Because many of the problems encountered by the Civil Division motions office are based on violations of rules of procedure, some anticipatory provision for rectification of these errors should be established. It is not acceptable to blame untimely performance of the motions office solely on the mistakes of counsel, particularly where the mistakes, as noted here, are recurring and predictable. Nonetheless, the Committee would be remiss if it did not further indicate a shocking awareness of the frequency of noncompliance by counsel. This cannot be condoned, and strict and severe action is mandated.

By this report, and by all other means available to it, the Bar of the District of Columbia should educate counsel towards the end of eliminating counsel errors in motions practice and eliminating the need for motions office personnel to spend time, substantial time, correcting counsel's errors, or returning filings that are deficient. The Committee learned that attorneys' motions errors are often committed by "repeat offenders".

Recommendation: The Court Study Committee recommends that the Motions Commissioner forward the names of counsel frequently not in compliance with court rules, together with documentation of their infractions, to the Board on Professional Responsibility, the disciplinary arm of the D.C. Bar, for censure or other appropriate disciplinary action. The Committee suggests that one appropriate disciplinary action might be required attendance at a series of continuing legal education classes on Superior Court Civil Division practice.

- 31 -

B. Non-Judicial Disposition

1. Rule 37 Motions and Unopposed Motions

In Committee interviews with the Superior Court Civil Division Motions Commissioner it was learned that a large portion of the motions filed each month are Civil Division Rule 37 Motions to Compel Discovery. Further, a large portion of those motions are prompted by the complete failure on the part of one counsel to provide discovery, rather than by an alleged nonresponsive answer. The Court Study Committee believes that certain types of Rule 37 Motions, such as those in which one party has not responded at all to a discovery request, and those other Rule 37 motions which, upon screening, are found not to be complex, should be ruled on by the motions commissioner without a formal Court hearing. Indeed, the complete failure to provide discovery, brought to the motions commissioner's attention, should subject the person who so fails to the automatic imposition of the sanctions of Rule 37(b)(2)A-E. These sanctions should be imposed without the prerequisite of an order and failure to comply therewith. There should, in such matters, be a right of "appeal" to a judge, but the Committee believes that this "appeal" route would be taken in only a small number of cases, so that a permanent second layer of decision - making would not be built into the system by this procedure. In cases of failure to provide discovery there usually would be no appealable point, and, in other cases, if the motions commissioner

- 32 -

rules fairly, the record of "affirmances" on appeal would be so high that a losing party would realize an appeal would be futile.

Rather than adding more delays to the motions commissioner's office, the Committee believes that this procedure for handling uncomplex Rule 37 motion would expedite the entire motions function in the Civil Division. It is believed that the motions commissioner would spend no more time ruling on simple Rule 37 motions than is now taken by screening those motions, assembling the papers for a judge, and notifying counsel of the judge's rulings. In addition, Rule 37 motions would be taken off the motion judge's calendar, thus allowing the judge to consider other motions earlier.

Currently unopposed motions in the Civil Division are screened by the motions commissioner's office and routed to the motions judge for approval. The Committee can find no compelling reason why routine unopposed motions should not be approved by the motions commissioner without referral to the motions judge.

Recommendation: The Court Study Committee recommends that the Motions Commissioner be empowered to act on routine unopposed motions. The Committee believes that criteria can be developed by the Court through the rules process to guide the Motions Commissioner in this area.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Motions Commissioner be empowered to rule on Motions to Compel Discovery (Rule 37), where they are deemed to be of an uncomplicated nature, or where the Rule 37

- 33 -

motions are grounded on a complete failure of counsel to respond to discovery. Such rulings would be appealable to the motions judge.

Recommendation: The Court Study Committee recommends that complete failure of a party to provide discovery pursuant to the Superior Court's Civil Division rules shall subject a person who so fails to the automatic imposition of sanctions under Court Rule 37 (G)(2)A-E. Such rulings or impositions of sanctions may be appealed by the aggrieved party, for good cause shown, followed by an explanation as to why there was a failure to comply with discovery requests, or showing that good faith attempts at compliance with discovery requests were made.

2. Unopposed Collection Cases

Statistics show that a very high percentage of cases filed in the Superior Court Civil Division (outside of the Small Claims Branch) are consumer collection cases. Presumably, this high proportion is growing as inflation reduces the value of the dollar and the Small Claims Branch ceiling (\$750) remains unchanged, and as consumer debt increases. A small Civil Division statistical study by the Committee of filings and awards 1975, 1976 and 1977 shows that, of case filings (non-Small Claims) in 1977, debt cases (i.e., a suit for a liquidated amount on a contract or note) accounted for 55% of all Civil Division filings.^{*} In 1976 the percentage was 36%, and in 1975, 47%. Of the debt cases, the amount of relief sought from the Civil Division in these lawsuits was \$2,000 or

^{*} See Appendix C for a copy of the statistical study.

- 34 -

less in 58% of the cases in 1975, 75% of the cases in 1976, and 68% of the cases in 1977.

Thus, it is not an exaggeration to say that small collection cases are clogging the Civil Division, or at least that part of the Division that deals with the cases before they are terminated. Most of these cases are against defendants who do not retain counsel, and the cases end in default judgments. Committee-generated statistics reveal that, in 1977, 70% of the debt cases ended in default. The percentage for 1975 was 67.5%, and in 1976 it was 54%. This method of termination for the bulk of the collection cases means that these cases do not burden the trial calendar, or the pretrial calendar, or even those functions of the Court concerned with settlement. The principal impact of the collection cases is felt in the motions commissioner's office. The motions commissioner estimates that of the motions that are not set for hearing by their office a large portion are unopposed motions filed by plaintiffs in collection cases.

The Court Study Committee suggests that the preponderance of small collection cases in the Civil Division's Civil II Docket is a persuasive reason for raising the statutory limit of the Small Claims Court from its present \$750 level.

While it has long been commonplace to say that the Small Claims Branch acts as a collection agency, the Court Study Committee does not believe it is commonly recognized

that the Civil II calendar of the Civil Division also is performing this function to a large degree. It is hoped that this report will prompt dialogue on this subject and a wider recognition of the problems caused by the use of the Court in this manner.

There are other equally important concerns with regard to raising the small claims jurisdiction above \$750, which the Statutory Court Subcommittee of the Court Study Committee is considering in greater depth. One concern, in that regard, is to place defendants in such "collection" cases on a more nearly equal footing with plaintiffs, than the normal Civil II court procedures readily allow. Raising the small claims jurisdiction would seemingly permit greater numbers of unrepresented litigants to participate in a court disposition in which they have a more active role.

Recommendation: The Court Study Committee recommends that the statutory ceiling in small claims cases be increased to \$2,500. It is also recommended that provision be made to permit further subsequent adjustments to the small claims ceiling by Court rule rather than by separate legislative action.

(It should be noted again that the Statutory Courts Report of the Court Study Committee examined the small claims area in greater depth, and from other perspectives than appears in the Civil Trial Court Report of the Court Study Committee. The reader may wish to refer to the document for additional material in this area.)

Section V of this report on the civil trial court will address the separate approach of voluntary arbitration as one means of managing civil litigation, including the so-called collection cases. The voluntary removal of civil cases from the formal court calendar and use of arbitration as a means of resolving the issues in question offers substantial promise for both reducing Superior Court Civil Division case levels and for providing outside formal court processes for constructive disposition of some civil disputes.

C. Other Aspects of Motions Practice

1. Office of the Motions Commissioner Staffing

It was earlier noted that the office of the Civil Motions Commissioner handles some 1,200 filings per month with an equivalent of five full time staff. Because of the stringency of budgetary resources District government-wide it does not appear feasible to recommend additional staff in this area. It appears, however, that the present use of law students by the Motions Commissioner's Office could be substantially expanded. There also appears to be a continuing problem of staff turnover in the assistant motions clerk position which bears review by the Civil Division Chief Clerk and the Superior Court's personnel office. Determination should be made as to whether this position should be reclassified so as to attract and retain suitable personnel.

2. Telemotions

One of the simplest and yet most promising innovations employed by trial courts in other jurisdictions to handle many types of motions is the use of telephone conference calls between opposing counsel and the motions judge. Presently, a great number of highly summary and often routine civil motions in the D.C. Superior Court can only be disposed of by having counsel physically appear before a judge in Court. While these matters are usually dispatched quite efficiently before the judge, the amount of in-court waiting before the judge's actual consideration of the motion can occupy several hours of the attorneys' time. These costs are ultimately passed through to the litigants.

The American Bar Association has sponsored a special commission to encourage the application of modern technology to the legal process. The ABA Action Commission to Reduce Court Costs and Delay has conducted surveys and analyses of the use of telephone conference calls procedures for hearing and disposing of motions. The telemotions procedure is presently in operation in several court systems including the Los Angeles Superior Court where Judge August Goebel is testing the procedure. Using the telemotions procedure since 1975, Judge Goebel is reported, in 1978, to have disposed of over three-quarters of all motions requiring oral argument by telephone. In Philadelphia, Judge Alfred Luongo, of the U.S. District Court, has disposed of over 1,000 motions in the last

ten years by telephone conference call. While the system is optional for attorneys, most lawyers chose the conference call over the time-consuming and disruptive trips to the courthouse. In the U.S. District Court in Baltimore, Judge Frank Kaufman uses the conference call system for all types of pretrial conferences, where in his view the issues are fairly simple. Judge Kaufman met with initial resistance from the government over the funding for the system, but after pointing out how much money the government spends on attorneys' in-court waiting time, the government agreed that the conference call system may be used to benefit the legal process.

An important factor in considering use of a telephone conference call procedure to handle certain types of motions relates to the issue of the hearing or proceeding being "on the record". In many courts this aspect of the procedure would be difficult to overcome. The D.C. Superior Court however is virtually unique among trial courts in the United States in that it has a highly sophisticated, reliable central recording room. Using a series of eight track tape recorders tied into a small computer, the Court is able to both record actual courtroom proceedings in the ten courtrooms wired for sound, as well as to employ existing recording and permanent tape storage capabilities for such other purposes as recording telephone conference calls.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division judicial leadership implement a pilot program using a telephone conference

call procedure to hear oral arguments in
selected opposed motions for an eighteen
month test period. The A.B.A. Action Com-
mission to Reduce Court Costs and Delay may
be an appropriate funding source for imple-
menting such a pilot program.

SECTION IV CIVIL DIVISION FRONT OFFICE PRACTICE

The preceding sections of this report address procedural areas relating to the caseflow, and substantive court consideration of cases filed in the Civil Division of the D.C. Superior Court. Operating concurrently with many of the substantive legal and procedural activities in the Civil Division noted previously is an administrative system which has direct bearing on the pace and form of litigation and even occasionally on the case outcome. This section identifies a number of findings and offers recommendations relating to such areas as control and access to civil case jackets, front counter filing procedures, and microfilming.

While the Ellison Committee court management study did not address the foregoing Civil Division issues, frequent reference was made to the cumbersome and counter-productive practice of having various Court of General Sessions functions divided among several courts and several buildings. The implication was clear: before the 1970 D.C. Court Reform Act, the division of otherwise related functions among different courts and different buildings served merely to compound the difficulties faced in a Civil Division that already lacked direction.

It should be stated, though, at the outset of this section that implementation of the 1970 D.C. Court Reform Act by the D.C. Courts, coupled with the 1978 opening of a modern

new D.C. Courthouse, have definitely had a highly positive impact on the administrative management of the Civil Division.

In the Superior Court Civil Division, the entry point for the greatest majority of the Division's business is at the front office filing counters. In these locations attorneys routinely file complaints, answers, other pleadings, motions, oppositions, pay fees, and examine case jackets. In the 1980 Annual Report of the D.C. Courts, the Civil Division reported in excess of 14,000 filings for 1978; a study done by Whittier College School of Law Court Delay Project projects 16,000 Superior Court Civil filings in 1979. The motions commissioner reports an additional 1200 filings in that office each month. Other sections of the Civil Division also report high-volume filings; the final depository for most of these documents is the Civil Division's case jacket area, located adjacent to the front counters. It is reasonable to project that the main Civil Division filing counters handle in excess of 30,000 documents each year. Each document filed may have a significant impact on the course of litigation, and many may determine the outcome of a given case. The result of backlogs, at any point along the flow which documents must pass, before being placed in the case jacket, can have a serious impact on the ability of the Civil Division to function properly.

A. Case Jacket Management

The Court Study Committee became aware in the course of its investigation of a serious, and growing problem within the Civil Division of misplaced and lost case jackets. Interviews with staff and judges in the Superior Court Civil Division revealed a recurring problem of misplaced, and temporarily lost civil case jackets. The problem often results in delays, and sometimes in a total failure to bring matters before a judge for disposition; in a failure to notify parties of orders; failure to issue orders; in an inability of attorneys to review the status of cases in the Court, and waste of manpower spent searching for lost case jackets. These delays and losses are occasioned not only by the practice of allowing attorneys free access to the case jackets, but also in the failure of the Civil Division to maintain efficient paper flow procedures that eliminate the need to have the case jacket travel throughout the Court for routine and perfunctory practices. Under the former Court of General Sessions and Federal District Court systems, often attorneys had to consult several different civil file offices to locate a case. The problems of lost case jackets, and absence of case flow plans, clearly plagued the Court of General Sessions. However, this concern was addressed primarily in the Ellison Committee's findings about the overall lack of Court of General Session managerial and judicial leadership, and was not dealt with independently by them, or by the 1970 D.C. Court Reform Act.

Under the present Civil Division case file system, an attorney wishing to review a case may pull the case jacket from the existing civil files. While an "out card," designed to show that the case jacket has been removed, is placed in the file drawer, it nonetheless cannot substitute for the case jacket itself. If the case jacket is required, the "out card" often will not produce the file in the time required. The Civil Division also operates a case file microfilm program in which pleadings, responses and all other individual case materials are photographed. While the Committee offers a number of specific findings related to the Civil Division microfilming program later in this section of the report, the important point to note here is that the Superior Court has a policy, and practice, of maintaining both a hard copy case record, -- i.e., the case jacket -- and a microfilm record on every Civil I and Civil II case filed.

It was reported to the Committee that a considerable amount of Civil Division staff time is spent locating case jackets. The civil motions Commissioner in an interview with the Committee commented on the time spent searching for jackets.

After considerable reflection on the Civil Division file management and access issue the Court Study Committee concludes that in virtually every situation there is no need for the case jacket to be used or moved, the exception being when a judge needs the case jacket for a disposition of the case, or a motion. To effect this suggestion would require a

number of internal procedural steps within the Civil Division relating to:

- stringent restrictions on access to case jackets by all court employees other than judges and their law clerks and courtroom personnel;
- adoption of a true central file system for case jackets;
- maintaining the Civil Division individual microfilmed case records current;
- and placement, in an appropriate location, accessible to attorneys and the public, of ample microfilm readers with ready access to the microfilm case jackets.

There is no doubt that adoption of the procedures briefly outlined above will require careful planning, some court staff training, and a substantial level of Civil Division practicing attorney adjustment. At the same time, the recurring problem of case jackets being spread across a number of possible locations within the Civil Division will be eliminated. This step will also free up existing staff who from time to time, spend substantial periods of time searching for case jackets.

The Committee believes that once the microfilming of documents is brought up to date, and maintained that way, and the quality and accessibility improved, attorneys will no longer have any legitimate need for case jackets themselves, and the practice of allowing attorney access to the case jackets can be halted. The elimination of the lost case jacket problem due to attorney use, and movement by Court

personnel for routine functions (where the jackets are actually rarely needed), will not, by itself, cure the problems of delays caused by lost case jackets, but will doubtlessly lessen the frequency of such incidents, and contribute overall to an improvement in the operations of the Civil Division. (It should be noted here again that Committee recommendations on microfilming practices appear later in this section.)

Recommendation: The Court Study Committee recommends that the Superior Court judicial and managerial leadership give serious consideration to the institution of a Civil Division central case jacket file system in which access to the individual jackets would be limited to judges. All other court, attorney and public need for the case jacket information would be met through a competently maintained case jacket microfilm system. Attorney access to the Civil Division central file area would be severely limited if not prohibited.

The Committee has also been made aware of an administrative problem that adversely affects the management of the case jackets. It appears that some support personnel who are responsible for the day-to-day operations of the Civil Division and who have contact with attorneys on a regular basis, sometimes fail to appreciate the devastating impact on individual cases which the Civil Division's inability to keep adequate track of its case jackets can have. This is not to imply that such support staff are rude or uncooperative. Rather, the Committee's view is that the staff is experiencing a sense of ongoing frustration with the case jacket file system, which sometimes means both that the file jacket cannot be located,

- 46 -

and the court staff is unable to state when the file will be available. The present system clearly has adversely impacted on the flow of civil litigation from time to time. Aside from the obvious problems that such attitude may have on the efficient operation of the Civil Division, the Committee is aware that this situation has on occasion resulted in individual case delays, lost folders, and wasted (yet expensive) manhours. It further acts as a disincentive for attorneys to work in concert with the Division to insure better and more effective Court operation.

Recommendation: The Court Study Committee recommends that consideration be given by the Court to inservice training of Civil Division personnel relating to the proper functioning of the case jacket file operation. Such training should include clear explanation of the adverse effect that their activities may have on the legal rights of litigants if those activities are not handled properly, and explanations on the nature of the documents they handle, and the impact of these documents on the flow of cases through the Division.

In an attempt to assure the utility of this inservice program it is further suggested that the D.C. Bar's continuing legal education program assist the Court in planning such an activity. It should also be noted that Catholic University Law Review (Vol. 26, Summer 1979, number 4), has published a highly useful Attorney's Guide to Courthouse Practice and Procedure: Civil Division, D.C. Superior Court in active cooperation with Superior Court Civil Division staff and judges. This guide should be widely available to court personnel and attorneys alike.

The Committee is aware of another, related area of concern in the expeditious handling of documents and case

jackets. Under present Civil Division file counter practice, documents, when received, must be individually hand stamped. The activity takes an inordinate amount of time, and considerable streamlining of this operation is needed. Presently, the court staff must physically complete a variety of separate steps on each filing before the filing is considered accepted by the Court. All of these activities take place while the filing party -- and others waiting in line -- is standing at the filing counter. First, the document must be examined and a determination made as to what type stamp to use. Then the document is stamped and briefly reviewed for accuracy. If a fee is involved, the filing party must then stand in a second line and pay the fee. There exists sufficient technology to eliminate much of this procedure. One possibility is use of a single, cash register type machine, which would allow for the placement of the document, and after the clerk depresses various keys for the nature of the filing, date and other data, the device can then make all the appropriate designations on the document itself, in a uniform pattern, and on a uniform place on the document. Once printed, the process is complete. With some relatively minor internal staff adjustment this same clerk could also handle the payment of the filing fees. Presently, much of the time, the cashier's office in this location is idle while the filing counter is exceedingly busy. Thus staff, who are physically present and could take some of the workload, are currently not being fully

utilized. To further expedite this process, the Civil Division may wish considering development of new standard forms upon which an attorney would predesignate the keys to be selected by the clerk.

Recommendation: The Court Study Committee recommends that a management study be conducted of the Civil Division filing counter operation with the objective of streamlining the filing of documents. Consideration should be given to combining the filing clerks and cashier functions at this location to make more efficient use of both Court staff resources and attorney time. The management study should seriously examine the existing cumbersome and time consuming Divisional practice of hand stamping documents as they are filed; and explore use of modern technology to accomplish many of the present manual operations.

The Court Study Committee is aware of a final problem in the case jacket filing area relating to the concept of "peak filing" times. It is generally known that there are certain times of the day and week in the Civil Division when a higher volume of filings occurs, usually Wednesday and Thursdays, which should consequently mandate an appropriate increase in Court personnel deployment. However, while some reallocations to meet demand are made, there are also times when the clerks sit idle, servicing barely a half dozen persons, and other times when too few clerks are trying to service a much larger, and almost unmanageable, volume of business.

An attractive alternative to standing in line, waiting to file documents, is the "at risk" system, used by the Fairfax County, Virginia Circuit Court among others.

Under this plan, an attorney may leave any filing which does not require paying a fee, in an "In" box, which will be periodically emptied by Division personnel, and handled in the ordinary fashion. However, if, on examination, the document is deficient in some manner, i.e., no Unified Bar number, not signed, etc., it will be rejected and returned to counsel, with an explanatory form letter. While the volume of business handled by the Civil Division would make this impractical across the board, limiting it to no-fee filings would considerably lessen the waiting-time burden on attorneys, and space Division staff workload more evenly.

Recommendation: The Court Study Committee recommends that the Civil Division Adopt an "at risk filing procedure for no fee filings where person would not be required to stand in line to file a document. The Civil Division should provide an "at risk" date stamp machine at this filing location to enable persons to self-stamp the pleading in the event of later question as to the date of court filing.

B. Civil Division Procedures and Attorney Practice

Attorney compliance with the policies and procedures of the Superior Court Civil Division was seen as mixed, by Committee members and by others interviewed in the course of preparing this report. This lack of consistency by the practicing bar in complying with the Court's rules and policies appears to be rooted in two separate, yet equally important issues. First, many attorneys who practice before the D.C. Courts also practice in a number of other jurisdictions. One apparent result of this situation is that these attorneys do

not necessarily keep abreast of minor procedural changes within a given jurisdiction, such as the D.C. Superior Court, with the result that filings may not be completely accurate.

The second element of the lack of attorney consistency in filing pleadings in the Superior Court Civil Division is the frequency of minor rules and procedural changes by the Court. Attorneys complained that it often appears that as soon as one set of filing procedures gets set, a host of changes and revisions are made necessitating re-education by the Bar. As Court procedures and rules become more consistent and routinized the frequency and level of attorney error in filings should decline.

If practices were standardized, then simple, one-shot education, with accompanying practice manuals, in great detail, would have the effect of teaching an attorney what was needed to know for a long time, instead of having the information be valid for only a short time, until the next change in Division procedures. Further, the Court should not have its clerks occupy substantial portions of their time explaining to individual attorneys their errors, and requirements of correct filings. Instead, the Court should have prepared explanations, pre-printed and ready for distribution to any attorney whose filings are deficient for any reason. Such pre-printed forms would address very particular issues, such as location of signatures, required verifications, necessary components of certain filings, etc. The production and distribution of

these pamphlets or hand-out sheets, given to the individual attorney upon detection, also would considerably reduce the delays at the filing windows. It has been recommended under the Motions Practice section of this report, that attorneys who repeatedly file documents incorrectly should be required to participate in continuing legal education programs. According to some Civil Division personnel, the problem of attorney non-compliance with Court rules and procedures is tremendously burdensome. One example cited was an instance where a single law firm had 75 filings returned in one month for failure to conform to court requirements.

Recommendation: The Court Study Committee recommends that the Civil Division Chief Clerk develop single sheet information hand-outs, with assistance as needed from the appropriate Bar Divisions, on frequently occurring attorney filing errors.

Recommendation: The Court Study Committee recommends that the Civil Division leadership review existing filing procedures and policies to make them consistent to the extent practical. The Court should also develop a heightened awareness of the impact of frequent changes in minor filing procedures on the practicing bar.

Recommendation: The Court Study Committee recommends that the continuing education committee of the D.C. Bar consult with the Superior Court Civil Division leadership to determine how the Bar can assist in improving attorney knowledge and compliance with court procedures.

C. Microfilming

The D.C. Superior Court has been quite progressive in its application of microfilming procedures and related

disciplines in addressing file management needs. Despite the many strides which have been made, it appears that the full potential of the microfilm area has not been attained.

The Court focused on the microfilming area as a problem within the past year and, as a result of growing concern, the National Center for State Courts was asked to evaluate microfilming practice in Superior Court. The National Center for State Courts released its report in April, 1979. The Committee has reviewed the report, and further understands that the Court agrees with the bulk of the recommendations made in the consultant study, but for financial reasons has not been able to implement the major recommendations. Of concern, however, is that the Court appears to have failed to implement even those recommendations made in the National Center Report that were specifically drafted under the assumption of a very tight financial situation.

The National Center Report dealt with several aspects of case jacket management, including filing systems, data processing, and microfilming. Many of the Center's recommendations have been incorporated into this Committee's discussion elsewhere, such as the major recommendation of developing a central file system and restricting access to the hard copy file. Therefore, this section will deal with a few specific recommendations on microfilming.

Under the present system, each division of the Superior Court, using a microfilming system, has its own

center. This often results in duplication of administrative and clerical work, and is a waste of technical skill and ability. A centralized microfilming center would reduce the number of administrative or supervisory staff required, allow for the continued improvement in quality of the microfilming images produced, and offer other important benefits as well. It must be noted that a central microfilming operation can only be effective if adequately staffed.

Recommendation: The Court Study Committee recommends that a central microfilming center be established in the Courthouse, to provide microfilming services to all divisions.

The National Center for State Courts Microfilming Report also favored the idea of moving the microfilming section of the Civil Division of the Superior Court to the inactive file area, and moving the microfilm jackets to the front, thus contributing to the continued pressure on attorneys to use the microfilm. Additionally, placing the microfilm operation out of the mainstream of Civil Division activity would produce an atmosphere more conducive to production, and stifle attempts to randomly pull personnel off this vital function to cover other tasks.

The Court Study Committee supports each of the above changes.

SECTION V VOLUNTARY ARBITRATION

Civil trial courts in increasing numbers of jurisdictions around the country have been implementing mandatory and voluntary arbitration programs as one means of facilitating the resolution of civil disputes. The Committee takes note of the leadership of Chief Judge H. Carl Moultrie I, in calling for the serious exploration of a civil arbitration program in the D.C. Courts.

While few persons see arbitration as a panacea for civil dispute resolution, it does provide, in the view of the Committee, a useful device for handling certain civil disputes. It must be remembered that the Superior Court Civil Division caseload is growing continually. In the last seven years, the number of filings handled by the division has increased by more than 44%, to over 14,000 cases. During the same period, Civil Division staffing and judicial levels have remained constant. At the same time, the costs of formal litigation have increased dramatically, often pricing litigants with valid claims out of court. These costs, combined with the increasing demands on court staff over the last five years, give an urgency to the examination of alternatives that it has not had before.

There are two principal types of alternative dispute resolution mechanisms: arbitration and mediation. Generally speaking, arbitration consists of a quasi-judicial hearing which results in a binding decision. Mediation, on the other

hand, consists of refereed negotiation resulting in a settlement agreement. The arbitrator's decision can be enforced in a manner somewhat similar to a foreign judgment, while mediated agreements leave open more possibility for contested litigation later. While the Committee recognizes that the utility of a mediation system may be found in so-called "preventive litigation," *i.e.*, using mediation to preclude the need to have the dispute resolved either in court, or in court-annexed arbitration, we feel that arbitration is better suited to diverting a number of types of civil cases from the Court's trial calendar.

Background

Arbitration has been known since the early English common law and has gained acceptance in a number of jurisdictions in this country. The Uniform Arbitration Act, providing a necessary legislative framework, has been enacted in 19 states and the District of Columbia. Title 16 Appendix of the D.C. Code (1973 Ed. Supp. VI), enacted in 1977, gives a promising alternative to formal litigation, one which may provide a means of reducing the civil caseload, and make available an inexpensive and rapid method for resolving cases where simplicity of issues make that attractive.

Traditionally, arbitration has been defined by three characteristics:

1. It is voluntary: the parties agree to submit a dispute to arbitration.

2. The arbitrator is selected by the parties: the selection is voluntary, although often the selection consists of an agreement to submit to a random selection process, operated by the Court.
3. There is no appeal: once the agreement to arbitrate has been reached, the arbitration process will finally determine the dispute between the parties.

Voluntary arbitration is available nationwide through the offices of the American Arbitration Association. Its use has been extensive in the areas of labor negotiation and contract disputes, some consumer dispute resolutions, and construction contracts. However, its occurrence in court-annexed programs is rare. Instead, several jurisdictions have adopted mandatory arbitration programs, either by court rule or statute, in which an arbitration procedure is employed before a civil litigant may have a trial.⁵ These mandatory arbitration programs differ from true arbitration in that: 1. their use is not voluntary; and 2. the arbitrator's decision is subject to the right of appeal, consistent with the constitutional provisions for jury trials in civil cases. Court-annexed programs

⁵ An excellent short review of arbitration experiences in various jurisdictions, and its relationship to crowded court calendars is the Judicial Council of California, The Role of Arbitration in the Judicial Process, 1972, John G. Fall, principal investigator.

are presently being used in certain classes of civil cases in California, New York, Ohio, Michigan, Arizona, and parts of Pennsylvania. Whether mandatory or voluntary, arbitration has the advantages of a more informal procedure, relaxed rules of evidence, and a much shorter time to disposition than do formal court processes.

Mandatory court-annexed arbitration has statistically been found to divert a much larger share of the civil caseload than have voluntary plans, according to Committee research and reports from Pennsylvania, Ohio, California and Florida. However, mandatory arbitration is not without cost to both litigants, for whom arbitration may simply be another pretrial procedural step, and to the Court and Bar who must provide manpower and logistical support for a high-volume program. These difficulties and questions about the appropriateness of mandatory arbitration in the District of Columbia Courts were reviewed by the D.C. Bar's May 1, 1979 Arbitration Committee Report, cited earlier.⁶ Because of the need for the active support of the Bar in order to effectively implement and manage a Civil Division arbitration program, it seems prudent to begin the use of arbitration on an experimental basis, with a system relying on the voluntary submission of parties to arbitration. The Court Study Committee also takes note of the

⁶ Also see Linda R. Singer, "Nonjudicial Dispute Resolution Mechanisms, the Effects on Justice for the Poor," Clearinghouse Review, December, 1979, p. 569.

June, 1980 District of Columbia Judicial Conference adopted report which recommended a voluntary arbitration program for civil cases of intermediate amounts.

To provide an effective opportunity to assess the continuing needs of the Court for arbitration, an effort should be made to divert a significant portion of the civil cases tried. With a voluntary program this effort would be in the form of publicity and informal persuasion, as well as rules changes to provide expedited handling of arbitrated cases. The committee feels that a pilot program should be implemented on a temporary basis. An 18 to 24 month test period is suggested.

It is the view of the Court Study Committee that a voluntary arbitration program for the Civil Division of the Superior Court is wholly appropriate, and could be in use in a relatively short time.

Recommendation: The Court Study Committee recommends an 18-month pilot project of voluntary arbitration be implemented by the D.C. Superior Court.

A. Jurisdiction

As noted earlier, the most important issue regarding an arbitration plan is whether it will be voluntary or mandatory. Elsewhere, voluntary arbitration was employed in the Los Angeles and San Francisco courts for over a year prior to the Fall Study, following which California adopted a statewide mandatory arbitration program, to be implemented at county option. A voluntary program would, similarly, afford the

Court and the Bar of the District of Columbia an opportunity to gain experience with arbitration before making it a permanent addition to the Superior Court Civil Division, where the program's benefits may be best used.

In order to provide a sufficiently large caseload to give the Court an opportunity to evaluate the success of the program, it would be best to divert at least 10% of the calendar. The Committee has examined several alternatives in the choice of jurisdiction for the arbitration program, but found most to be unacceptable. For example, a dollar ceiling, or floor, which delineates the bounds of the arbitration program's jurisdiction is impractical, for counsel can simply alter the amount demanded to avoid arbitration. Similarly, diversion by casetype is not viable, since counsel can plead additional items which would remove the case from arbitration. The Committee recognizes that there are some cases, some litigants, and some attorneys, who simply will not submit to binding arbitration. Yet there is also a group which will voluntarily submit. If the Court and the Bar take an active role in promoting the system, this group may grow even larger. Added impetus may be had by frequently publishing comparative statistics regarding disposition times, etc.

It would appear to the Committee that active commitment to arbitration on the part of the judges of the Civil Division is critical to the success of any pilot program. Consistent with this, an election to arbitrate or not should

be required when the complaint and answer are filed and no later than the first notice sent from the court after issue is joined.

Recommendation: The Court Study Committee recommends that the arbitration program be available to litigants in Civil cases. The request may be made at the time a complaint or an answer is filed and may be made as to some, or all, of the issues in the case. If either party objects or refuses to submit to arbitration, the case is carried on the court calendar in the regular manner.

B. Promotion

As noted previously, for any arbitration program to work, it must receive support from the Court and from the Bar. In 1979, the Judicial Conference expressed an interest in studying arbitration in D.C. Superior Court. Given the court's apparent interest in arbitration, the Bar should undertake to support and encourage the court's leadership efforts in this regard.

Recommendation: The Court Study Committee recommends that the D.C. Bar work closely with the Civil Division in promoting the voluntary use of arbitration, and in monitoring and refining the operation of the program.

C. Court Rules

There is already authority in Title 16 - Appendix (D.C. Code 1973 Ed., Supp. VI) for arbitration in the District of Columbia. Superior Court Civ. R. 70-1 provides for the judicial verification of arbitration awards. However, to maintain the steady flow of cases through the Civil Division, other minor rules changes must be made, to provide for no loss

of priority for cases which are referred to arbitration, and to provide for the referring of cases to the arbitration program.

Recommendation: The Court Study Committee recommends that Superior Court Civil Rule 40-1(e) be amended to provide continuances without the necessity of court appearances, where the parties have agreed to submit to arbitration.

Recommendation: The Court Study Committee recommends that Superior Court Civil Rule 40-1(b) be amended to provide priority for actions to confirm arbitration awards.

D. Appeals

For cases voluntarily submitted to arbitration, the program need not provide an appeal. Experience in New York City has shown that the absence of the right to appeal was not a deterrent to litigants to avail themselves of the opportunity to go to arbitration. The Committee believes that the same will be true of any efficiently run arbitration program here, and that no appeal should be provided.

E. Administration

For the purposes of the eighteen month pilot project, it would be valuable to have the interim arbitration administrator appointed by, and answerable to, the Chief Judge. Such an administrator would be responsible for the day-to-day operations of the arbitration program, and would work in conjunction with Civil Division personnel to monitor such things as caseload, and speed of disposition. Should the

evaluation at the close of the eighteen month period be favorable, then the administration of the program could be delegated to a position within the hierarchy of the Civil Division, under the guidance of, and responsible to, the Chief of the Civil Division.

Recommendation: The Court Study Committee recommends that for the purpose of the pilot voluntary arbitration program, an administrator be appointed by the Chief Judge to oversee the operation of the arbitration program.

F. Arbitrators

Virtually every jurisdiction using an arbitration system randomly selects arbitrators to hear cases from pools of volunteer attorneys who meet certain minimum requirements, usually 3-5 years membership in good standing in the local Bar and completion of a short training course. Usually, three persons are selected as the panel for the arbitration; this is the practice in Pennsylvania, Ohio, and other jurisdictions. New York City's Small Claims Court uses a single attorney to hear the relatively simple cases.

Recommendation: The Court Study Committee recommends that a three arbitrator panel system be used in any pilot program, but that the parties may stipulate to a single arbitrator.

Conclusion

The Court Study Committee concludes that the proper use of arbitration will have many positive results: it will increase the ability of judges to reach the entire trial calendar each day (by removing more cases from it); it will

allow judges to devote more time to other matters, e.g. ex parte proofs, motions, examinations, etc. (by reducing case-load); it will allow for a clear working relationship between the Court and the Bar; it will provide the public with a fast, relatively inexpensive and fair disposition of civil matters; and it will encourage the settlement of disputes in an informal, less contentious and less intimidating forum.

APPENDIX A

PERSONS INTERVIEWED

1. Lee Barthelow, Head
Central Recording Room
Superior Court of the District of Columbia
personal interview: December 7, 1979
telephone interview: January 14, 1980
2. Honorable James A. Belson
Associate Judge
Superior Court of the District of Columbia
personal interview: January 26, 1979, (plus
follow-up discussions)
3. Fran Cholka, Chief
Budget and Finance
Los Angeles Superior Court
telephone interview: October 30, 1979
4. Charles Cliver, Deputy Administrator
Civil Division
Philadelphia, Pennsylvania
telephone interview: November, 1979
5. Peter Djinis, Attorney Advisor
Civil Division
Superior Court of the District of Columbia
telephone interview: November 30, 1979
6. Douglas Dodge, Project Director
Standards and Goals Project
National Center for State Courts
personal interview: November 1, 1978
7. Ernest Friesen, Dean
Whittier College School of Law
personal interview: August 2, 1979
8. Thomas A. Hammond, Jr., Chief Deputy Clerk
Civil Division
Superior Court of the District of Columbia
personal interviews: March 26, 1979; March 13, 1980
telephone interviews: January 14, 1980; February 3, 1980

9. Honorable Joseph M. Hannon
Associate Judge
Superior Court of the District of Columbia
personal interview: January 26, 1979; (plus
follow-up discussions)
10. John Iverson, Arbitration Commissioner
Superior Court
Los Angeles, California
telephone interview: November 2, 1978
11. Jane Lamb, Civil Motions Commissioner
Civil Division
Superior Court of the District of Columbia
personal interview: July 26, 1979
12. Michael Lewis
Center for Community Justice
telephone interview: November 30, 1979
13. Thomas Lombard
Association of Trial Lawyers
personal interview: October 18, 1979
14. Thomas Musterman
Center for Jury Studies
telephone interview: October 18, 1979
15. Paul Nejelski, Staff Director
A.B.A. Action Commission to Reduce Court
Costs and Delay personal interview:
May 9, 1979
16. M. Brent Oldham, Chairman
Board of Appeals and Review
District of Columbia Government
personal interview: January 10, 1979
17. Julian F. Schonter, Deputy Clerk
Civil Actions Branch, Civil Division
Superior Court of the District of Columbia
telephone interview: March 10, 1980
18. Robert Schweikart, Mediation Clerk
Court of Common Pleas
Wayne County (Detroit), Michigan
telephone interview: March 26, 1979

APPENDIX B

CIVIL DIVISION CALENDAR SURVEY

The Civil Subcommittee of the D.C. Court System Committee has been examining the operations of the Civil Division of the D.C. Superior Court in order to evaluate the implementation of the 1970 D.C. Court Reform and Criminal Procedures Act. Part of this evaluation is a comparison between the Civil Division of the Court of General Sessions and that of the Superior Court. One problem area, noted by the Committee which evaluated the Court of General Sessions (the Ellison Committee's Court Management Study), was the inconsistency and unpredictability of the degree to which the General Sessions could take action on every case on its civil trial calendar each day. This is called "reaching" cases. The Ellison Committee found great inconsistency, and frequent failure by the Court to reach all its set cases.

The Court Study Committee undertook a short study of this process in the Superior Court's Civil Division, by examining the 69 weeks between September 4, 1978 and March 7, 1980, taking daily and weekly figures.

The overall conclusion of the study was that the Civil Division of the Superior Court was still only reaching all its set cases on 1/2 of the days surveyed. On the other half of the days, at least one case was not reached. The following are detailed illustrations of various aspects of civil calendar management.

I. Results: (based upon Tuesday and Thursday statistical compilations)

The Civil Division was able to reach the entire calendar only 50% of the days surveyed.

The Civil Division was able to leave no more than one case unreached 69% of the days surveyed.

The Civil Division was able to leave no more than two cases unreached 74.6% of the days surveyed.

II. Results: (based on Tuesday and Thursday statistical compilation)

The following table shows the number of days on which the Civil Division of the Superior Court was able to reach all or less than all of its calendared cases, and the percentages they represent.

<u># cases not reached</u>	<u># days occurring</u>	<u>% of total days (cumul)</u>	
0	69	50	
1	18	13	(63)
2	16	11.6	(74.6)
3	8	5.8	(80.4)
4	9	6.5	(87.0)
5	6	4.3	(91.3)
6	5	3.6	(94.9)
7	2	1.4	(96.3)
8	2	1.4	(97.8)
8+	3	2.2	(100)

III. Results: (based on weekly aggregations)

<u>190.29</u>	cases per week are originally scheduled/calendared to be heard.
<u>58.15</u>	cases per week remain on the calendar after all other pretrial activities (settlement conferences, dispositive motion, etc.) have been completed.
<u>9.32</u>	cases per week are not reached.
<u>16.1%</u>	of all cases remaining on the calendar, on the day of trial, on weekly average, are not reached.

IV. Results: (based on Tuesday and Thursday compilations)

The following table shows the number of days that the noted percentage of cases were reached by the Court. The lowest figure in the survey sample was 13.3% of cases reached.

<u>% Reached</u>	<u># of days</u>	<u>% of total days (cumul)</u>	
100 (all cases)	69	50	
95-99.9	0	0	(50)
90-94.9	14	0.2	(60.2)
85-89.9	12	8.7	(68.9)
80-84.9	10	.2	(76.1)
75-79.9	7	5.1	(81.2)
70-74.9	4	2.9	(84.1)

- 68 -

60-69.9	7	5.1	(89.2)
50-59.9	8	5.7	(94.9)
less than 50%	7	5.1	(100.)

- V. Fallout: Based upon weekly aggregations, on the average, only 30.56% of the originally scheduled cases will remain on the calendar on that day. The survey sample contained a range for this category of 8.5% (however, this was one of the occasions when oversetting was used; the figure is otherwise 13.7) up to 40.7% of cases remaining on the calendar. The majority of weeks in the survey had between 26 and 36% of the cases remain on the calendar on the original date (65.3% of all weeks fell in this range). In 31.9% of the weeks in the survey, between 28 and 32% of all cases remained. While the range of percentage fallout is not constant, it is predictably within the 26-32% range.

- VI. Notes: The Assignment Office, on at least four occasions since September 4, 1978, has been forced to notify parties to a case, calendared for the following week, that due to projected and anticipated judicial absence, they should not plan on coming down to the Court on that originally scheduled day. This practice, called "oversetting", is, in practice, a form of anticipatory "not reaching." It offers the advantage of not wasting parties' time by requiring their presence in Court when it is known in advance that the case will not be reached.

APPENDIX C

CIVIL FILINGS SAMPLE STUDY

The Civil Subcommittee of the D.C. Court System Study Committee undertook a sample study of civil case filings. A sample of civil cases other than small claims and landlord and tenant was taken from 1975, 1976 and 1977 Superior Court filings. In each of the three years surveyed, the sample size represented about 1% of civil case filings - i.e. 1975 case sample of 112 cases, 1976 case sample of 115 cases, and 1977 case sample of 115 cases.

Table I: SUPERIOR COURT CIVIL DIVISION FILINGS,
DESCRIPTIVE INFORMATION

<u>1975-1977</u>			
<u>A. Casetype</u>	<u>1975(%)</u>	<u>1976(%)</u>	<u>1977(%)</u>
Contracts			
Breach	16 (14.3)	7 (16.1)	14 (12.4)
Debt	53 (47.3)	41 (35.6)	62 (54.8)
Other	(1.8)	0	1 (0.9)
Property Conversion	1 (0.9)	0	1 (0.9)
Torts			
Negligence	14 (12.5)	19 (16.6)	7 (6.2)
Auto	22 (19.6)	39 (33.9)	25 (22.1)
Other	4 (3.6)	9 (7.8)	3 (2.7)
Total	112 (100)	115 (100)	113 (100)
<u>B. Nature of Parties</u>	<u>1975(%)</u>	<u>1976(%)</u>	<u>1977(%)</u>
Plaintiffs:			
Private	42 (37.5)	56 (48.7)	76 (67.3)
Corporations	66 (58.9)	59 (51.3)	37 (32.7)
Government	4 (3.6)	0	0
Defendants:			
Private	73 (65.2)	83 (72.2)	98 (86.7)
Corporations	37 (33.0)	26 (22.6)	12 (10.6)
Government	2 (1.8)	6 (5.2)	3 (2.7)

- 70 -

C. <u>Disposition Methods</u>	<u>1975(%)</u>	<u>1976(%)</u>	<u>1977(%)</u>
Default	43 (38.4)	37 (32.2)	56 (49.6)
Dismissed	(3.6)	9 (7.8)	1 (0.9)
Settled	45 (40.1)	50 (43.4)	38 (33.6)
Judgment	18 (16.1)	17 (14.8)	13 (11.5)
Summary Judgment	<u>2 (1.8)</u>	<u>2 (1.8)</u>	<u>5 (4.4)</u>
Total	112 (100)	115 (100)	113 (100)

TABLE II: DOLLAR AMOUNT DEMANDED AT FILING/AWARDED BY CIVIL COURT

\$ Amount Demanded	1975 (%)*	1976 (%)*	1977 (%)*
0-500		2	1
500-750	(2.6)	0 (1.7)	0 (.8)
750-1000	16 (17.0)	22 (20.7)	20 (18.6)
1000-1250	(24.1)	9 (28.4)	14 (31.0)
1250-1500	11 (34.0)	5 (32.8)	13 (42.5)
1500-1750	6 (39.3)	5 (37.1)	5 (46.9)
1750-2000	1 (40.2)	8 (44.0)	3 (49.6)
2000-2500	11 (50.0)	6 (49.1)	8 (56.6)
2500-3000	3 (52.7)	4 (52.6)	10 (65.5)
3000-4000	4 (56.3)	1 (53.4)	3 (68.1)
4000-5000	2 (58.0)	0	0
5000-7500	7 (64.3)	3 (56.1)	6 (73.4)
7500-10,000	3 (67.0)	0	3 (76.1)
10,000-12,500	10 (76.9)	2 (57.8)	1 (77.0)
12,500-15,000	0	1 (58.6)	0
15,000-20,000	2 (77.8)	0	2 (78.8)
20,000-30,000	6 (83.1)	4 (62.1)	1 (79.6)
30,000-50,000	1 (84.0)	1 (62.9)	0
50,000-100,000	8 (91.1)	20 (80.1)	8 (86.7)
100,000-300,000	6 (96.4)	13 (91.4)	9 (94.7)
300,000-500,000	2 (98.2)	3 (94.0)	4 (98.2)
500,000-1,000,000	1 (99.1)	4 (97.4)	1 (99.1)
1,000,000+	1 (100)	3 (100)	1 (100)
<u>\$ Amount Awarded</u>			
0-500	2 (12.9)	20 (20.6)	7 (6.4)
500-750	5 (18.3)	0	2 (8.3)
750-1000	9 (38.7)	22 (43.3)	26 (32.1)
1000-1250	8 (47.3)	8 (51.2)	12 (43.1)
1250-1500	12 (60.2)	8 (59.8)	12 (54.1)
1500-1750	6 (66.7)	5 (64.9)	6 (59.6)
1750-2000	2 (68.8)	12 (77.3)	6 (65.1)
2000-2500	(76.3)	5 (82.4)	10 (74.3)
2500-3000	3 (79.6)	6 (88.7)	9 (82.6)
3000-4000	6 (86.0)	4 (92.8)	6 (88.1)
4000-5000	1 (87.1)	0	0
5000-7500	5 (92.5)	3 (95.9)	8 (95.4)
7500-10,000	2 (94.6)	1 (96.9)	2 (97.2)
10,000-12,500	3 (97.8)	3 (100)	1 (98.2)
12,500-15,000	1 (98.9)	0	0
15,000-20,000	0	0	1 (99.1)
20,000-30,000	1 (100)	0	0
30,000-50,000	0	0	1 (100)
50,000+	0	0	0
Unknown	19 (17.0)	18 (15.7)	4 (3.5)
Total	112	115	113

* % are cumulative except in "Unknown" column.

TABLE III: DERIVATIONS FOR CIVIL DIVISION FILING STATISTICS,
1975-7

A. Debt cases where disposition method was a default judgment. Of all debt cases in the sample (#), % were decided by default.

	<u>#</u>	<u>%</u>
1975:	52	67.5
1976:	41	53.6
1977:	62	70.0

B. Debt cases expressed in terms of the amount demanded.

<u>\$</u>	<u>1975#(%)</u>	<u>1976#(%)</u>	<u>1977#(%)</u>
0-1000	11 (21.1)	13 (30.1)	14 (22.6)
1000-1500	12 (44.2)	10 (56.1)	21 (56.1)
1500-2000	7 (57.6)	8 (75.3)	7 (67.7)
2000-3000	10 (76.9)	7 (92.7)	14 (90.1)
3000-5000	3 (82.7)	1 (95.1)	3 (95.1)
5000-10,000	6 (94.2)	1 (97.6)	3 (100)
10,000-15,000	3 (100)	0	0
15,000-25,000	0	1 (100)	0
25,000+	0	0	0
Total	52	41	62

APPENDIX D

Bibliography

- Belson, Honorable James A., Chairman. Report of the District of Columbia Judicial Conference Committee on the Feasibility of Establishing a Short Track for Civil Litigation. District of Columbia Judicial Conference. Washington, D.C. June, 1980.
- Church, Thomas. "Civil Case Delay in State Trial Courts", Justice System Journal, Volume 412, Winter, 1978, p. 166-196.
- Church, Thomas, Jr. et al. Justice Delayed: The Pace of Litigation in Urban Trial Courts. National Center for State Courts, 1978.
- Committee on the Administration of Justice to the Judicial Council of the District of Columbia. Court Management Study, Part 1 -Summary. Washington, D.C., May 1970.
- Committee on the Administration of Justice to the Judicial Council of the District of Columbia. Court Management Study, Part 2. Washington, D.C., May, 1970
- District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 91st Cong., 2d Sess., July 29, 1970.
- Fall, John G. The Role of Arbitration in the Judicial Process. Judicial Council of California, San Francisco, California, 1972.
- Flanders, Steven. "Case in the Federal Courts: Some Controversies and Some Results", Justice System Journal, Volume 412, Winter 1978, pp. 147-165.
- King, Rufus, III., Chairman. Report of the D.C. Bar Superior Court Arbitration Committee to the D.C. Bar Board of Governors. Washington, D.C., May 1, 1979 (unpublished).
- Lacey, Frederick B., Judge, U.S. District Court: District of New Jersey, "The Judge's Role in the Settlement of Civil Suits". Federal Judicial Center Education and Training Series, September 26, 1977.

- Ruhnka, John C. and Steven Weller. Small Claims Courts: A National Examination. National Center for State Courts, Williamsburg, Virginia, 1978.
- Singer, Linda R., "Nonjudicial Dispute Resolution Mechanisms: The Effects on Justice for the Poor". Clearinghouse Review, December 1979.
- D.C. Superior Court, Annual Juvenile Statistical Report. Superior Court of the District of Columbia, Washington, D.C., 1977.
- D.C. Superior Court, Monthly Statistical Reports Civil Division, 1977 and 1978. Washington, D.C.
- Whittier College School of Law. Descriptive Report of the District of Columbia Superior Court Caseflows, Working Papers. Washington, D.C., October 1979.

COMMITTEE REPORT

CRIMINAL TRIAL COURT REPORT
OF THE D.C. COURT SYSTEM
STUDY COMMITTEE
OF THE
DISTRICT OF COLUMBIA BAR

Charles A. Horsky
Chairman

Samuel F. Harahan
Staff Director

February 17, 1982

(139)

TABLE OF CONTENTS

Criminal Trial Court Report

	<u>Page</u>
Introduction	1
Section I General Comparison of Criminal Case Processing by the U.S. District Court and D.C. Court of General Sessions with that of the D.C. Superior Court . .	3
A. Criminal Case Backlogs and Delay .	5
B. Reduction of Criminal Charges . . .	13
C. Judicial Responsibility for Con- trolling Criminal Case Progress . .	16
Section II Superior Court Misdemeanor and Felony Case Calendaring	25
A. Calendar Management Areas Primarily under Superior Court Criminal Division Control.	27
B. Calendar Management Issues Pri- marily Beyond the Control of the Superior Court.	36
Section III Sentencing	42
Section IV Witness Management	45
Section V Other Criminal Court Issues	50
Section VI The Criminal Justice Act Program	57
A. History and Background.	57
B. Elements of the New CJA Plan. . . .	59
C. Implementation of the CJA Plan. . .	66
Appendix A-Persons Interviewed.	71
Appendix B-Bibliography	74

CRIMINAL TRIAL COURT REPORT RECOMMENDATIONS

	<u>Page</u>
1. <u>Recommendation: The Court Study Committee recommends that the criminal case statistical reports generated by the D.C. Superior Court reflect data about the mean and median processing times for criminal cases organized by the major stages in the flow of misdemeanor and felony cases.</u>	13
2. <u>Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division uniformly adopt daily courtroom calendaring procedures whereby case appearance times are set forth in advance and wherever possible scrupulously observed.</u>	30
3. <u>Recommendation: The Court Study Committee recommends that the Superior Court Criminal Rules regarding discovery be reviewed to extend discovery in certain areas to the pre-indictment stage of criminal case processing.</u>	34
4. <u>Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division adopt an omnibus hearing procedure in lieu of the existing status hearing approach.</u>	34
5. <u>Recommendation: The Court Study Committee recommends that the Criminal Division Administrative Judge together with the Social Service Division leadership, and defense and prosecution representatives review the existing probation revocation hearing practices with the objective of making these proceedings more effective. Use of a portion of one of the court-wide training conferences to improve the consistency of these proceedings across the Court might also be considered.</u>	36
6. <u>Recommendation: The Court Study Committee recommends that the prisoner movement and related marshal's functions in the D.C. Superior Court be performed by a D.C. Marshals Service and that the U.S. Congress enact appropriate enabling legislation to bring about such a transfer of jurisdiction within the next two years.</u>	38

- | | <u>Page</u> |
|--|-------------|
| 7. <u>Recommendation: The Court Study Committee recommends that the Office of the U.S. Attorney review its staff training programs, and supervisory orientation practices with the objective of improving the consistency of Assistant United States Attorneys handling of the case management and discovery functions. Particular attention should be directed to more close supervisory monitoring of Assistant U.S. Attorney performance in the misdemeanor court. Additionally defense counsel should be encouraged to consult with supervisory staff in the U.S. Attorney's Office when discovery problems arise.</u> | 39 |
| 8. <u>Recommendations: The Court Study Committee recommends that the Criminal Division Administrative Judge, together with representatives of the CJA Bar, and other court units, explore the feasibility of instituting a paging system to facilitate defense attorney availability in Criminal Division courtroom proceedings.</u> | 41 |
| 9. <u>Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division adopt a system of Sentencing "Guidelines" which judges should consult as they consider individual cases.</u> | 44 |
| 10. <u>Recommendation: The Court Study Committee recommends that research be undertaken by appropriate groups to determine the sentencing practices of the Superior Court, and whether serious disparity exists.</u> | 44 |
| 11. <u>Recommendation: The Court Study Committee recommends that the Witness Unit of the U.S. Attorney assume full responsibility for notifying felony and misdemeanor witnesses as to any and all appearances and material case status changes.</u> | 46 |
| 12. <u>Recommendation: The Court Study Committee recommends that police training include teaching effective witness management, and that performance with respect to witness management be a part of the routine evaluation of a police officer's overall performance.</u> | 47 |
| 13. <u>Recommendation: The Court Study Committee recommends that the Witness Unit's services be made available to provide information and counseling to both felony and misdemeanor witnesses, and in addition that all prospective witnesses routinely be provided with a handbook</u> | 48 |

- describing witness procedures and answering common questions.
14. Recommendation: The Court Study Committee recommends that witnesses be informed early in the process that they are eligible to receive compensation for their service as witnesses. 49
 15. Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office improve subpoena procedures to minimize time unnecessarily spent in court by witnesses; and that the Witness Unit institute an experimental "on call" subpoena system. 49
 16. Recommendation: The Court Study Committee recommends that the Superior Court leadership, including the Director of Social Services and the Court Executive assess the capacity and resource needs of the Social Service Division to perform its functions. 51
 17. Recommendation: The Court Study Committee recommends that the Criminal Division judicial leadership direct an examination of the judicial caseload area and develop proposed felony and misdemeanor judicial caseload standards. Such standards, once developed, may provide further evidence of the staffing levels required by the Division to perform its functions within reasonable time limits. 52
 18. Recommendation: The Court Study Committee recommends that the D.C. Council consider whether to revise the penalty structures for certain minor criminal offenses with one objective being reducing the number of offenses where an absolute jury trial right is preserved. 53
 19. Recommendation: The Court Study Committee recommends that defendant-related drug information be routinely provided to Superior Court Criminal Division judges, particularly in the arraignment court-proceeding, and that the Court have access to adequate drug treatment services for drug dependant defendants. 56
 20. Recommendation: The Court Study Committee recommends that the Superior Court promptly convene the nominating panel for appointment of a D.C. Criminal Defense Agency Board of Trustees so that the Agency can be established and a director hired to implement the plan. 67

- | | <u>Page</u> |
|--|-------------|
| 21. <u>Recommendation: The Court Study Committee recommends that the Braman and Forrest Committees conclude their consideration of Unit II of the CJA plan so that the requisite approvals can be secured and implementation of the new procedures proposed in Unit II can begin.</u> | 68 |
| 22. <u>Recommendation: The Court Study Committee recommends that the D.C. Criminal Justice Act defense attorney compensation levels be increased promptly.</u> | 69 |
| 23. <u>Recommendation: The Court Study Committee recommends that, as soon as Unit II has been reviewed and approved, the Forrest Committee prepare a comprehensive statutory proposal for submission to the D. C. City Council for establishment of a D. C. Criminal Defense Agency. The Committee further recommends that the D. C. Bar, the Courts, the Public Defender Service and other concerned organizations join forces in support of statutory enactment of the CJA Plan.</u> | 70 |
| 24. <u>Recommendation: The Court Study Committee recommends the early transfer of the authority to appoint and to determine compensation of CJA counsel from the D.C. Superior Court to a statutorily created independent defense agency.</u> | 70 |

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the criminal trial court area. The purpose of the Court Study Committee has been to assess the impact and the changes resulting from the enactment of the 1970 D.C. Court Reform and Criminal Procedures Act and to offer procedural, statutory and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. Court System leadership, and to the community. The D.C. Court System Study Committee, chaired by Charles A. Horsky, is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Criminal Trial Court Subcommittee was responsible for the principal investigative and analytic work leading to the Court Study Committee's findings and recommendations in this area. Subcommittee members Gerald M. Caplan, Judith Gorfkle, Christopher M. Kerns, and John A. Turner, Jr. and Steffen W. Graae, Co-chairs, were assisted in the drafting of their report by Jeffrey Sherman, and Samuel F. Harahan, staff director of the Committee.

The Court Study Committee is very appreciative of the time and interest of many judges, court staff, and others in the course of preparing this report.

In developing its findings and recommendations, the Court Study Committee had the benefit of all the historical records and files of the Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit. This D.C. Circuit Judicial Council ad hoc Committee on the Administration of Justice, chaired by Newell W. Ellison (the "Ellison Committee"), used a professional court management study team to examine the local courts and related agencies in the District of Columbia during the period 1966 to 1970. The materials of the Ellison Committee have been an invaluable resource in understanding the operation of the courts of the District of Columbia during the 1960's, and the Court Study Committee has relied on these papers for much of the historical discussion contained in this report.

The Committee had access to a 1979 caseflow analysis pertaining to the Superior Court which was performed under contract from the Court by a private social science organization, as part of an overall court delay reduction project. These materials were useful to the Committee in developing its report findings.

Finally, the Court Study Committee was aided by the American Bar Association Standards in making its recommendations.

SECTION I GENERAL COMPARISON OF CRIMINAL CASE PROCESSING BY
THE U.S. DISTRICT COURT AND D.C. COURT OF GENERAL
SESSIONS WITH THAT OF THE D.C. SUPERIOR COURT

Introduction

Implementation of the 1970 D. C. Court Reform Act began effective February 1, 1971. The Act provided for the phased transfer of all local civil and criminal jurisdiction to the newly created Superior Court of the District of Columbia over a several year period. In the criminal area, full misdemeanor and some felony jurisdiction were vested in the Superior Court February 1, 1971, with all remaining local felony jurisdiction being transferred from the U. S. District Court to the D.C. Superior Court effective August 1, 1972.

Before the implementation of the 1970 D.C. Court Reform Act jurisdiction of criminal cases was divided between the D.C. Court of General Sessions and the U.S. District Court for the District of Columbia. Misdemeanor cases were handled in the Court of General Sessions from the initial court appearance to eventual adjudication or other disposition of the case. While both local (D.C. Code) and federal (U.S. Code) felony cases were tried and disposed of in the U.S. District Court, in most felony cases the D.C. Court of General Sessions served as the committing magistrate, determining probable cause.¹

¹ Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit. Report of the Court Management Study Submitted to the D. C. Courts and Related Agencies. Committee on the District of Columbia, United States Senate, May 1970. Part 1. Summary, p. 43, footnote 10. Referred to throughout this report as the Ellison Committee Report.

In the criminal trial court area the 1970 D.C. Court Reform Act had at least two important purposes -- first

" . . .to eliminate the backlogs and delays which had all but crippled the [D.C.] criminal justice system . . .";

and second,

" . . .to find a way to eliminate unwarranted reductions in charges in order that felonies might be treated, both at the time of indictment and at the time of disposition, as felonies rather than as minor misdemeanors as a result of wholesale and systematic charge reduction."²

The May 1970 Ellison Committee Report of the Judicial Council of the D.C. Circuit³ provides copious documentary evidence of the pre-1970 case delays and backlog problems in the then local and federal trial and appellate courts of the District of Columbia. That Report, and others,⁴ also described a variety of collateral problems which, in the late 1960's, faced the criminal courts in the District of Columbia. These documents often contained specific suggestions for reform. Problem areas

² Harold H. Greene, "Report of D.C. Superior Court Chief Judge to the U.S. Attorney General, August 1973." (From Ellison Committee files (unpublished). Washington, D.C.

³ Op. cit.

⁴ See, for example, U.S. President's Commission on Crime in the District of Columbia. Report of the President's Commission on Crime in the District of Columbia. U.S. Government Printing Office, Washington, D.C. 1966. "March 1967, Special Report of D.C. Court of General Sessions Chief Judge Harold H. Greene to the U.S. Attorney General" (unpublished), and the "November 1971, Special Report on the Operations of the Superior Court of the District of Columbia to the Mayor-Commissioner," by Chief Judge Harold H. Greene (unpublished).

identified included: criminal case calendar management within the courts; the administrative and judicial management and leadership on the part of the courts of the District of Columbia; and criminal defense services.

The remainder of this brief initial comparative section of the report will examine aspects of several of the above problem and goal areas with regard to the District of Columbia criminal trial courts before and after implementation of the 1970 D.C. Court Reform Act.

A. Criminal Case Backlogs and Delay

1. Statistical Profiles

Court backlog and delay in processing criminal cases relates both to how much time cases take to move through the court process, and to how many cases are pending at various points in time, such as at year's end. Conceptually, criminal cases may be considered "delayed" when they have been in the court process longer than someone, or some entity, determines is appropriate, or is desirable. For example, in 1967 the President's Commission on Law Enforcement and the Administration of Justice stated in the Task Force Reports on the Courts that a typical felony case should be disposed of within nine months of arrest (including appeal).⁵ In a similar regard, former Superior Court Chief Judge Harold H. Greene once reported

⁵ The President's Commission on Law Enforcement and the Administration of Justice. "Task Force Report: The Courts" (1967), p. 84.

that criminal cases optimally should be disposed of within six weeks of indictment.⁶ More recently, in 1981 present Superior Court Chief Judge H. Carl Moultrie I, articulated criminal case processing goals of 60 days for misdemeanor cases from arrest to court disposition, and 80 days for felony cases.⁷ These case processing goals offer a useful frame of reference for assessing the extent of case delay from the data and narrative which follow.⁸

The amount of time required for processing felony cases by the courts of the District of Columbia has been extremely variable over time. In 1969 the U.S. District Court for the District of Columbia averaged 242 days to dispose of felony cases from time of arrest.⁹ In August 1973, the D. C. Superior Court reported that felony cases were disposed of in

⁶ Op. cit. Greene, Harold H. November 1971 Special Report, p. 4, footnote 9.

⁷ Moultrie, H. Carl I. Statement to 6th Annual D.C. Judicial Conference, June 1981.

⁸ Because the statistics in this section were assembled from a number of different sources, each with slightly varying terminological perspectives, the reader is cautioned that the precision of the data from a comparative perspective is subject to question. However, the overall value of the material, in terms of portraying criminal case delay before and after the implementation of the 1970 D.C. Court Reform Act, remains.

⁹ Op. cit. Ellison Committee Report, p. 42. Vol 1.

110 days from the initiation of litigation.¹⁰ A very detailed and well documented study by Inslaw, Inc. based on criminal cases entering the D.C. Superior Court in 1974, found that most felonies were disposed of within 186 days of arrest.¹¹ (The Inslaw study also noted that fully one-third of the felony cases examined required more than 186 days to reach disposition.)

More recent felony case processing time data on the Superior Court lacks the empirical reliability of the 1974-5 Inslaw study. A small statistical study conducted as part of a 1979 court delay project found that in 1979 the median lapse time for processing felony cases from arrest to trial was 171 days, and from arrest to disposition was 212 days.¹²

The processing time for misdemeanor cases by the courts of the District of Columbia revealed much wider ranges than the above felony data. In 1969 serious misdemeanor cases required an average of 61 days for the Court of General Sessions

¹⁰ Op. cit. Chief Judge Greene, "1973 Report to U.S. Attorney General," p. 5. The actual figure Chief Judge Greene cited was eight weeks to disposition in felony cases. To this number, the average grand jury processing period at that time of 60 days was added.

¹¹ Hausner, Jack and Michael Siedel. An Analysis of Case Processing Time in the District of Columbia Superior Court. Washington, D.C. INSLAW, Inc. March 1981, p. 31. The statement appearing in the text at page 31 referred to post-indictment processing time. To this number, the average grand jury processing period at that time of 66 days was added.

¹² District of Columbia Court Delay Reduction Project, Whittier College School of Law, 1979-80. Felony Track Event. Interim descriptive reports referred to as Whittier Study.

to dispose of from the time of arrest.¹³ In 1973 the comparable misdemeanor case processing time for the Superior Court was reduced to 28 days.¹⁴ In 1974 the mean misdemeanor case processing time had risen to 65 days from filing to disposition.¹⁵ Data for 1979 from the Whittier Study revealed that the median time from arrest to trial for misdemeanor cases rose dramatically to 242 days, and 265 days from arrest to final court disposition.¹⁶

Several general conclusions can be offered as to trial court delay in the District of Columbia. First, the implementation of the 1970 D.C. Court Reform Act has reduced somewhat the length of court processing time in felony cases. Whether one looks at 1973, 1974 or 1979, each of these years reveal that local felony cases were processed more promptly in the D.C. Superior Court than in the U.S. District Court before 1971. (Cases were processed 50 percent faster in 1973, as compared with 1969; 20 percent faster in 1974 when compared with 1969; and 10 percent faster in 1979 when compared with similar 1969 data.)

A parallel conclusion is that felony case processing in the D.C. Superior Court is seriously delayed when measured against Court leadership articulated standards.

¹³ Op. cit. Ellison, Volume 1, p. 43.

¹⁴ Op. cit. Chief Judge Greene, 1973 Report, p. 5.

¹⁵ Op. cit. Hausner, p. 22.

¹⁶ Op. cit. Whittier Study. Misdemeanor Track Events F & H.

The Superior Court's experience with misdemeanor case processing time does not compare favorably with the pre-1970 period, as the felony data did. The information presented above revealed that misdemeanor case processing times rose from 28 days in 1973, to 65 days in 1974, to 265 days in 1979. Comparable U.S. District Court data for 1969 were 61 days from filing to court disposition.

When one relates the goals articulated for criminal case processing by Superior Court leadership to the actual court data over the past ten years, it appears evident that the goals are attainable -- and in some years have actually been surpassed. However the wide variations in case processing time, particularly in the misdemeanor area where data indicates a range from 65 days to 265 days to disposition, indicate that there are factors impeding the Superior Court's capacity to move the criminal docket in a consistent and sustained manner.

The above discussion addressed the elapsed time local felony cases and misdemeanor cases required to pass through the trial courts of the District of Columbia for selected years 1969 to 1979. The material which follows examines information about pending criminal cases, and general felony and misdemeanor caseload levels over time in the District of Columbia. Data in this area will refer to either cases or defendants, as there were some time periods when case data could not be located.

The backlog of felony cases pending in the U.S. District Court in 1969 was 1,714 cases. This statistic increased to 1,750 in 1970.¹⁷

In the D.C. Court of General Sessions in 1970 the serious misdemeanor case backlog reached its peak level of 2,412 cases pending.¹⁸ Misdemeanor data for the Superior Court shows 913 defendants with pending cases in January 1973, and 996 defendants pending January 1974.¹⁹ Pending misdemeanor case data also showed a steady rise for much of the period since the passage of the 1970 D.C. Court Reform Act. In January 1977, 3,221 misdemeanor cases were pending in the Superior Court.²⁰ By January 1980 this statistic had increased to 4,467.²¹ Misdemeanor data for calendar year 1980 reveals a major downward shift in pending cases. With the introduction of a special individual calendar project the Superior Court was able to reduce the number of pending misdemeanor cases from 1979 levels by 46 percent, to the level of 2,399.²²

¹⁷ OCJP&A, Comprehensive Plan for Law Enforcement and Criminal Justice in the District of Columbia, December 1970. Table 7, p. 9. 113 Volume I. D.C. Government.

¹⁸ Op. cit. Greene, November 1971, p. 2.

¹⁹ D.C. Court System, 1976 Annual Report, p. 50.

²⁰ Op. cit. Greene, February, 1977, p. 5.

²¹ D.C. Court System, 1980 Annual Report, p. 38.

²² D.C. Court System, 1980 Annual Report, p. 38.

Felony defendant and case data on pending actions in the D.C. Superior Court since 1971 are also revealing. At the time the Act was implemented in February 1971, 1,750 defendants had felony cases pending.²³ By January 1973 the number of felony defendants with pending cases was reduced to 802.²⁴ In 1977 the number of felony cases pending was 1,476, while in January 1980 the pending felony caseload stood at 1,094 cases.²⁵

Several conclusions can be drawn from the above materials. First, the implementation of the 1970 D.C. Court Reform Act gave the Superior Court an increased capacity over that of either the U.S. District Court or the Court of General Sessions selectively to reduce pending caseloads. Sustained lowering of the pending caseloads in either area, however, appeared to take place at the expense of either the felony pending caseload or the misdemeanor caseload. An additional conclusion relates to the fact that the approximate number of judges available to hear criminal cases in the Superior Court has remained stable over the period since 1971, while the magnitude of case activity grew, particularly in the felony area. Thus, in terms of criminal caseload pending at the end of each year, the Superior Court judges and supporting Criminal

²³ Op. cit., Greene, November 1971, p. 2.

²⁴ Op. cit., Greene, August 1973, Table B.

²⁵ Op. cit., 1980 Annual Report, p. 45.

Division Clerk's Office staff appear, as with the recent misdemeanor individual calendar project, to be exerting considerable efforts to keep the overall caseload in check.

The final conclusion relating to the pending criminal caseload goes to the analysis itself. Data reflecting numbers of criminal cases pending in the Superior Court on December 31 each year are of limited utility in determining the average time required for a case to proceed through the court process. Of greater use would be data on the mean and median age of cases, by type, at the time they are disposed of, by whatever method. It would then be possible to determine over time the extent to which the business of the District of Columbia criminal court is dispatched with appropriate speed. The D.C. Courts' Annual Report and the periodic divisional statistical reports prepared within the D.C. Superior Court should be modified to reflect case age data, from point of arrest -- or other entry -- and from major stages within the court process itself -- such as arraignment, indictment, trial, sentencing, etc. (As a model of the type of analysis possible with time based case statistics the reader is referred to the previously cited INSLAW study on Superior Court case processing.)

Recommendation: The Court Study Committee recommends that the criminal case statistical reports generated by the D.C. Superior Court reflect data about the mean and median processing times for criminal cases organized by the major stages in the flow of misdemeanor and felony cases.

B. Reduction of Criminal Charges

In the introduction to this comparative section, note was made that one of the underlying objectives of reorganizing the criminal courts of the District of Columbia was to eliminate the longstanding practice of reducing felony charges to misdemeanor charges so cases could be tried more quickly in the D.C. Court of General Sessions.²⁶

Data on criminal charge reduction practices in the District of Columbia over the period since the implementation of the 1970 D.C. Court Reform Act were for the most part unavailable to the Court Study Committee. The only published data on this specific issue which the Committee could locate was the INSLAW study on case processing in the D.C. Superior Court. This INSLAW report reveals that in 1974 only 3 percent of the arrests on felony charges were accepted for prosecution as misdemeanors.²⁷

The principal data the Court Study Committee examined relating to the subject of felony charge reductions in the District of Columbia was the annual felony indictment rate before and after court reorganization. This statistic was

²⁶ Op. cit., 1970 D.C. Comprehensive Plan, Vol. I, p. 95.

²⁷ Op. cit., Hausner, p. 10.

examined because of an assumed relationship between the annual rate at which the prosecutor seeks and receives grand jury indictments and the charge reduction phenomena. Presumably, increases in grand jury indictment rates over time correlate inversely with prosecution policies of reducing charges. (Underlying this entire issue is the presumed capacity of the court to dispose of felony indictments brought before it in a timely fashion. Were the prosecution to lack confidence in the court's ability to dispose of felony cases within a reasonable time -- as with the U.S. District Court before court reorganization -- it would not likely bring increased numbers of felony indictments before the Superior Court.)

The felony indictment rate in the District of Columbia remained relatively constant for the 20 years preceding the February 1971 implementation date for the 1970 D.C. Court Reform Act. The level fluctuated between 2,000 and 2,100 per year despite a quadrupling in the crime rate and a tripling in the prosecution rate over the 1950-1970 period.²⁸ By 1973 Superior Court Chief Judge Harold Greene was able to report²⁹ that indictments were being returned at the rate of 3,264 annually in Superior Court and 1,168 in U.S. District Court, for a combined indictment rate of over 4,000 cases per year in

²⁸ Op. cit., Greene, November 1971, p. 4.

²⁹ Op. cit., Greene, August 1973, p. 6.

the District of Columbia.³⁰ In 1974 Superior Court indictments remained steady at 3,233.³¹ (The U.S. District Court statistic was not available for the same period.) In fiscal year 1978 the Superior Court, U.S. District Court, and combined indictment data, were as follows: 2,308, 735 and 3,043.³² In 1980, indictments for the same courts and combined were 2,785 in Superior Court,³³ 285 in the District Court,³⁴ and 3,070 combined.

The above indictment statistics demonstrate that in the ten years since implementation of the 1970 D.C. Court Reform Act, annual felony indictments for the District of Columbia have been consistently at least 50 percent greater than comparable data show before 1971. Additionally, the specific felony charge reduction data which was available for 1974 showed that substantially less than 5 percent of felony arrests result in the prosecution charges being reduced to a misdemeanor.

³⁰ It is appropriate to consider aggregate indictment statistics when comparing before and since court reorganization, as before 1971 only the U.S. District Court had felony jurisdiction. Thus pre-1971 data include indictments for both U.S. Code offenses and D.C. Code offenses.

³¹ Op. cit., Hausner, p. 10.

³² U.S. Attorney for D.C. FY 1978 Report of the U.S. Attorney for the District of Columbia, p. 42.

³³ U.S. Attorney for D.C. Report of the United States Attorney for the District of Columbia, October 1978 - December 1980, P. 25.

³⁴ Id., p. 13.

From these data, it is a reasonable inference that the implementation of the 1970 Court Reform Act by the Superior Court and related agencies has contributed markedly to the elimination of the longstanding practice of reducing serious felony criminal charges to lesser misdemeanor charges. The judges and staff of the D.C. Superior Court and the Office of the U.S. Attorney for the District of Columbia deserve commendation for creating a judicial and prosecutorial environment where criminal charges can be considered on their merits, and not adversely determined due to external court case processing exigencies.

C. Judicial Responsibility for Controlling Criminal Case Progress

The previously referenced May 1970 Ellison Committee Report on the courts and related agencies in the District of Columbia makes repeated mention of the lack of effective judicial control over criminal case flow in the various D.C. courts. That Report cited many examples, including a U.S. District Court rule which required U. S. Attorney's Office approval before a criminal case could be scheduled for trial,²⁵ and the liberal continuance policies of both the D.C. Court of General Sessions and the U.S. District Court.²⁶ In the words of the Ellison Committee, "Continuance rates of this magnitude

²⁵ Op. cit. Ellison Report, Vol. 1, p. 56.

²⁶ Ibid., p. 66.

demonstrate . . . that the trial bar has, in effect, controlled the pace of litigation in the courts."²⁷

A number of procedural and case management reforms were instituted by the U.S. District Court and the Court of General Sessions in the late 1960's to improve judicial control over case progress within the courts. The most successful reform, from a statistical and dispositional perspective, was the introduction in 1969 of an individual calendar for criminal cases by the U.S. District Court. While certain reforms were instituted by the judicial leadership in the Court of General Sessions during this same period, the judges of that Court appeared to routinely ignore calendaring guidelines suggested by the chief judge.²⁸

With the implementation of the 1970 D.C. Court Reform Act the Superior Court commenced a long and continuing series of programs to improve the flow of criminal cases before the Court, and in turn to assure greater judicial control over the case flow than that enjoyed by the Court of General Sessions. For example, at the time the 1970 Act became effective, an individual calendar program for the most serious felony cases was begun. Numerous short-term intensive judicial case management programs were undertaken in the 1971-78 period to impact on growing criminal caseloads in the Superior Court. As the

²⁷ Ibid.

²⁸ Op. cit., Ellison, Vol. 1, p. 67.

statistical data on backlogs and pending cases showed earlier, many of these initiatives were quite effective at the point they were in practice. In January, 1980, the Superior Court initiated a misdemeanor individual calendar program. As noted earlier, the first year of operation resulted in a 37 percent reduction in pending misdemeanor case levels when compared with the previous 12-month period.

In the felony area the Superior Court in 1979 began an experimental "vertical prosecution" project to attempt more expeditious processing of certain types of felony cases."⁹ In this program one judge is responsible for handling all judicial stages in the life of those randomly assigned cases which are part of the project. Additionally, a cadre of prosecuting attorneys is also assigned to these same cases.

Several elements of judicial control over criminal case flow bear examination. One such area which appears not to have improved markedly since the creation of the D.C. Superior Court in 1971 is the case continuance practice. Both before 1971 and more recently it appears from the statistics and Court Study Committee interviews with attorneys now practicing in the Superior Court Criminal Division that case setting policies bear little relation to available judgepower. For example, continuance data developed by INSLAW using

⁹ Op. cit., U. S. Attorney Report, October 1978 - December 1980, p. 1.

- 19 -

cases filed in 1974-75 in the Superior Court revealed the following:

Average Number of Continuances
in Felony Cases by Type of Disposition
(all cases)^{**}

Type of Disposition

Pleas	3.52
Trials	4.69
Dismissals	3.12

Average Number of Continuances
in Misdemeanor Cases by Type of Disposition
(all cases)^{*1}

Type of Disposition

Pleas	1.63
Trials	2.08
Dismissals	1.68

(One explanation offered for the continuance practices in the misdemeanor area in Superior Court was that the prosecutor had a policy at one time that when a defendant had both a felony charge and a misdemeanor charge pending at the same time, of going forward first on the felony charge.)

While more recent data than 1974 on actual criminal case continuance practices were not available to the Committee, interviews with practicing attorneys and judges conducted by the Court Study Committee revealed that they believed a substantial proportion of criminal cases are continued frequently due

^{**} Op cit., Hausner, Table 6, p. 28

^{*1} Ibid., Table 8, p. 31.

to lack of judicial availability after the trial or status hearing date has been set.

The final aspect of judicial control of criminal case scheduling which will be briefly examined before and after court reorganization concerns uniformity of judicial control among the judiciary. The Ellison Committee Report noted the potentially serious problem when court procedures and the enforcement of policies vary widely as different judges rotate through the court.⁴² Citing such Court of General Sessions practices as rotating criminal assignment court judges biweekly, the Ellison Committee recommended adoption of greater centralized direction for calendar management whereby court policies and standards could be applied uniformly. That report also commented on the infeasibility of having the chief judge manage the trial calendar, as well as carry the administrative responsibilities of the office. Recommendations were offered to have the Court of General Sessions assignment court judge function as the manager of the criminal trial system.

With the implementation of the 1970 D.C. Court Reform Act, important strides were made, as noted earlier, to improve the degree of judicial control over the criminal calendar. However, from February 1971 to the Fall of 1978 no parallel delegation of a judge to manage the criminal calendar was made

⁴² Op. cit., Ellison, Vol. 1, p. 60; Vol. 1, p. 147; Vol. 2, pp. 115-117.

by the court leadership. Related to this, by inference at least, is the point that, lacking centralized direction, judges handling criminal cases operated under a wide variety of individual policies, procedures and courtroom approaches. (Interviews of court staff and practicing attorneys clearly bore out the essence of the above statement.)

With the institution of a Superior Court Criminal Division Administrative Judge position in 1978, the degree and level of coordination among the judges sitting in this area increased markedly. At the same time, however, the Court Study Committee concludes from practicing attorney interviews, and its own collective experiences, that there is a serious ongoing need to improve individual judges' adherence to established criminal court policies and procedures. The Court Study Committee commends Chief Judge Moultrie for instituting the divisional administrative judge concept, and supports further efforts to improve consistency of judicial approaches in applying established criminal rules, procedures and policies.

The information above briefly examined the broad issue of judicial control in criminal case movement exercised before and after court reorganization. On the important measure of the level of judicial involvement in criminal cases after they are filed in the court, it appears evident that the Superior Court judges, and particularly the chief judges, have developed or supported numerous constructive approaches over the past ten years to improve the movement of cases through

the Court. These efforts at increasing judicial responsibility and oversight of the pace of criminal case flow are essential, and deserve support and commendation by the Bar and the community. The high priority the Superior Court has placed on the need for active judicial involvement in case management is entirely consistent with one of the conclusions appearing in the Ellison Committee Report:

"An essential component of solutions to backlog and delay problems in all courts seems to be an uncompromising commitment by the judges and administrative staff, under the leadership of the Chief Judge, to finding a remedy."¹

Looking at the issue of the effectiveness of actual judicial control over the movement of criminal cases as measured by the Court's continuance statistics, room for substantial improvement still exists. Whereas before 1971 an average of .5 continuances were granted for each major misdemeanor case in the D.C. Court of General Sessions,² data from criminal cases filed in the Superior Court in 1974 showed that an average of 2.26 continuances were granted for criminal cases processed by the Superior Court.³ For the Superior Court to exercise effective control over the movement of criminal cases before the

¹ Ibid., Vol. 2, p. 114.

² Ibid., Vol. I, p. 66.

³ Op. cit., Hausner, pp. 28-31. Figure represents an extrapolation from Tables 6 and 8, showing 9887 cases disposed, and 22,382 continuances granted.

Court, it must manage the case calendars in such a manner that continuances are only infrequently permitted.

It must also be stated and emphasized that, while the Court Study Committee believes additional substantive improvement can be made in the effectiveness of the Superior Court's control of the management of criminal cases filed with the Court, at the same time the Court is an integral part of a much larger justice system in the District of Columbia. The capacity of the judiciary to manage any of the separate case calendars -- criminal or civil -- is to a degree determined by the volume of litigation brought before it. It is incumbent on the Court, and on other organizations like the police, the prosecution, the defense, the Mayor, the D.C. Council, and others, to recognize the interdependency of the Superior Court in the larger justice environment, and yet also to appreciate the independent position and responsibility which the judiciary must exercise in our system of government.

Conclusion

In some important areas, such as time to disposition and judicial control over the flow of criminal cases, the 1970 D.C. Court Reform Act, and the resolve of those responsible for its administration have achieved demonstrable positive results. In other areas such as case continuances policies and consistency among judges in the conduct of criminal cases, additional improvement by the Superior Court is necessary. The Court Study

Committee is particularly heartened by the generally high commitment level and willingness to search for improvement in the administration of criminal justice on the part of the judges and administrative staff of the D.C. Superior Court.

SECTION II SUPERIOR COURT MISDEMEANOR AND FELONY CASE
CALENDARING PROGRAMS

Introduction

Since the passage of the 1970 D.C. Court Reform Act a variety of different strategies have been devised and employed by both the Superior Court and others to move the criminal case calendar.

Calendarizing initiatives have included use of diversionary programs to remove certain types of cases from the court calendar, modification of the grand jury screening procedures, short term deployment of additional judges to expedite consideration of pending cases of one type or another, expanded use of the individual calendar, and others. Preliminary evidence suggests that the shift from the master calendar to the individual calendar -- i.e. where cases are assigned to one judge from time of intake through court disposition -- holds particular promise for effective case management.**

While the thrust of this section focuses on areas where calendar management procedures need strengthening, the Court Study Committee acknowledges the existence, since the creation of the Superior Court, of extensive rules of procedure, and of periodic memoranda issued by the chief judges when new or modified programs have been instituted.

** Individual calendar approaches also facilitate increased judicial accountability when compared to traditional master or hybrid calendar systems.

These materials and other like them are instrumental in the consistent conduct of criminal proceedings in the Superior Court. When compared with rules of procedure for the former Court of General Sessions, the Superior Court's rules are far more comprehensive, and much more detailed. The Superior Court bench is to be commended for developing and adopting these procedurally important materials.

Before examining calendar management issues primarily under Superior Court control, and some issues beyond active court control, it is important to note once again that the management of the criminal caseload is subject to a vast number of external factors over which the Superior Court has virtually no control. Recent examples in this regard include:

- increases in the crime rate for various types of crime;
- legislative actions amending the D.C. Criminal Code;
- changes in arrest policies by the police such as efforts to curb drug sales or prostitution;⁴⁷
- changes in prosecution policies by the U.S. Attorney or D.C. Corporation Counsel such as changed standards for diversion program eligibility;
- availability of witnesses;
- availability of Marshals to service the criminal court in prisoner movement;
- attorney scheduling conflicts.

⁴⁷ In the closing months of 1981 alone the Superior Court experienced 200 to 300 more drug cases being filed each month than was the situation in the Fall of 1980.

Factors beyond the Court's active control are more numerous in the Superior Court Criminal Division (and in the Family Division Juvenile Branch) than in the other case management divisions of the Court. The work of Criminal Division appears to be particularly subject to factors external to the Court which impinge on the effective management of cases processed by this Division.

A. Calendar Management Areas Primarily under Superior Court Criminal Division Control

The present heavy emphasis on the individual calendar system had highlighted weaknesses in some areas of criminal court procedure and practice, and in some procedures of court-related agencies. Areas of Superior Court procedure identified from interviews and Court Study Committee research as adversely impacting on the management and effective case flow in the Court's criminal calendar included:

- widely varying judicial practices and procedures in handling the daily courtroom calendar;
- lack of consistency among the judges as to the conduct and content of status hearings, particularly regarding discovery;
- routine oversetting of the daily calendar leading to liberal case continuance granting practices;
- and the wide variation between judges in the handling and conduct of post-sentencing proceedings.

Attorneys practicing before the D.C. Superior Court Criminal Division experience a wide variety of judicial approaches

to managing the daily courtroom calendar. Some judges appeared to be particularly skilled at handling a variety of scheduled and emergency matters with appropriate dispatch. Others appeared to lack either adequate relevant prior experience or proper training to perform the vital criminal case calendar management function in an effective manner.

The Court Study Committee observed that a number of Criminal Division judges set their daily courtroom calendar well in advance and with particularity as to time allotments within the day when matters were scheduled. Other Criminal Division judges routinely set every case on their daily calendar for a 9. A.M. appearance. Thus all counsel, witnesses, defendants, and related parties appearing before these judges have to wait at the Court until called.

The Court Study Committee also received considerable statements in the course of preparing this report about the wide variations among individual Criminal Division judges as to when Court sessions begin in the morning, the length of breaks during the day, the length and certainty of timing of lunch breaks, and similar areas. Fully appreciating the need for flexibility and latitude in the conduct of individual courtrooms by the respective judges assigned to the Criminal Division, the Court Study Committee favors increased communication between the bench and the many courtroom participants as to the judge's individual approach and practices.

The Court Study Committee recognizes many of the difficulties in managing effectively the daily Criminal Division courtroom calendar. Individual judicial practices which require parties in all cases set for learing on a given day to appear at the courthouse at the same time do not reflect favorably on the Court's capacity to manage the criminal calendar; nor do such practices show proper recognition or respect for the time of parties appearing before Criminal Division judges.

The Court Study Committee concludes that further substantive improvement in the management and effectiveness of the daily Criminal Division courtroom calendar can be achieved. Were the Court only to identify in some systematic manner the most effective individual judge's techniques in this area and then adopt them Division-wide positive important progress would result. In this same area the members of the Criminal Division Clerk's Office also represents an important resource for identifying approaches to facilitate daily calendar management of the Division, and they should be fully and substantively involved in this matter.

The Court Study Committee favors the adoption of daily calendaring procedures by the Criminal Division which reflect case scheduling throughout the day, and in advance, and which embrace those salutary approaches some Superior Court judges already employ.

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division uniformly adopt daily courtroom calendaring procedures whereby case appearance times are set forth in advance and wherever possible scrupulously observed.

The timing of status hearings following the initial criminal court appearance is generally prescribed by written Superior Court policy and rules of procedure. Court Study Committee observation, however, revealed very wide variation between judges as to the conduct, and in turn the apparent utility of these potentially important hearings. Court Study Committee examination revealed problems concerning scheduling practices, the length of time various Superior Court judges allow for motions presentation or argument in these hearings, and the actual content of the status hearings.

Criminal Division judicial approaches vary widely in scheduling status hearings; some judges schedule all criminal case status hearings during short breaks in their trial calendar, others prefer grouping all such hearings together; still other judges use variations on the first two approaches. For counsel appearing before a number of Criminal Division judges representing different clients, the wide variety of judicial practices results in both serious scheduling conflicts, and considerable attorney waiting time. Of perhaps greater importance is the fact that some scheduling practices are far more effective in disposing of the Court's business than are others. As with the daily courtroom calendar area, the Court Study Committee favors Criminal Division judges setting forth specific times

for conducting their status hearings; once such hearings are scheduled judges should make every effort to adhere to the specified time for the status hearing.

The content of status hearings is also of substantive importance in terms of efficient criminal case calendar flow. Committee observation revealed judges who routinely heard non-evidentiary motions at status hearings but who would not consider previously filed substantive motions at these hearings. Still other judges were observed to use the status hearings to address any matter pending before the Court in the case at that time.

The status hearing proceeding, if properly managed, represents an excellent forum for resolving pending matters in a criminal case, and for planning the subsequent trial or disposition hearing phase of the case flow. Judges in some courts have developed informational checklists for conducting these hearings to be completed by opposing counsel in advance of the proceeding.

Through devices such as status hearing checklists the Court can assure greater continuity in the coverage of issues in the Criminal Division status hearings. At status hearings, for example, the judge should address any pending discovery issues in the case; determine whether any motions are pending or planned; ascertain whether witness problems exist, etc. As a result of the information developed in the

status hearing the judge's capacity to manage subsequent events in the flow of the case are materially enhanced.

The discovery area, in particular needs to be much more completely addressed in Criminal Division case status hearings than is often done currently. The Court Study Committee concludes that at present a considerable amount of wasted motion is expended in many cases at present around the discovery issue. Many defense attorneys observed that it was routine practice to file any number of different motions with the Court in the expectation that each separate hearing will result in slightly more discovery being granted by the prosecution. Additionally, the Committee was informed that some Superior Court judges direct the prosecution to grant discovery while other judges allow very limited discovery. An additional element of the discovery area which the expanded status hearing approach can address is the lack of consistency by individual assistant U.S. Attorneys in granting discovery. Some defense counsel noted the discovery situation was particularly difficult when dealing with those U.S. Government attorneys who are specially assigned to the Office of the U.S. Attorney for short periods. Appropriate judicial intervention at the status hearing materially expedites case flow in the discovery area.

The Court Study Committee concludes that the status hearing should address and resolve any remaining discovery issues; the Superior Court Board of Judges in adopting the Criminal Justice Act Plan in 1980 also cited the need for early

discovery. In Section 10.4 of the C.J.A. Plan the Board of Judges recognized the relationship between early effective discovery and the performance of the defense function.

One viable approach the Superior Court Criminal Division might employ in the whole status hearing area is to expand these proceedings to address at this stage any pending matters as a matter of routine. The American Bar Association Project on Standards for Criminal Justice offers some useful material in the area of expanded or more substantive status hearings. In the volume entitled, Standards Relating to Discovery and Omnibus Hearing, recommendations are offered as to what areas should be addressed at an omnibus hearing. Standard 5.3 identifies items including:

- (a) whether the parties have completed discovery, and if not, make orders appropriate to expedite completion;
- (b) making ruling on any motions, demurrers or other requests then pending, and ascertain whether additional motions, demurrers or requests will be made at the hearing;
- (c) ascertain whether there are any procedural or constitutional issues which should be considered;^{**}

The Standards continue with discussion about handling a number of issues related to the matters considered at an

^{**} American Bar Association Project on Standards for Criminal Justice. Standards Relating to Discovery and Omnibus Hearing. Washington D.C. p. 114.

omnibus hearing such as any requirements for additional discovery and the Court's monitoring of same.

The Court Study Committee believes the A.B.A. recommendations and commentary concerning omnibus hearings warrant the most careful consideration by the Superior Court as a possible expansion on the existing criminal case status hearing. At a minimum a pilot program should be considered to determine the effectiveness of such a program in the Criminal Division.

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Rules regarding discovery be reviewed to extend discovery in certain areas to the pre-indictment stage of criminal case processing.

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division adopt an omnibus hearing procedure in lieu of the existing status hearing approach.

The Committee noted in the first section of this Criminal Trial Court Report one area of general court practice which does not appear to have improved as a result of the 1970 D.C. Court Reform Act, namely the granting of continuances. In an environment where a number of misdemeanor judges have case-loads of up to and exceeding 500 pending cases, oversetting the daily calendar can become a routine practice; in turn continuances also become the rule rather than the exception. Few Superior Court Criminal cases are disposed of without one or more continuances being granted.

The Court Study Committee did not have access to recent years' Criminal Division statistical data on the

continuance issue. Committee interviews, however, did reveal a constant theme of cases not going to trial on the date scheduled, missed hearings, and other examples of liberal continuance practices.

The Court Study Committee also was informed of the importance of the extra judge -- or so-called swing judge -- to the efficient conduct of Criminal Division calendar. While quantitative data was not available on this point, interviews with Superior Court personnel graphically portrayed the essential character of the swing judge concept to handling case overflow from other Criminal Division judges whose calendars break down. In turn this judicial resource appears to offer a meaningful device for lessening the frequency of continuances in criminal cases.

The final area of Criminal Division procedure the Court Study Committee identified which affects the management of the calendar concerns the handling and conduct by judges of post-sentencing proceedings, particularly probation revocation hearings. As with the handling of status hearings the Committee was informed of a total lack of consistency among Criminal Division judges in handling the probation revocation hearings. The issue relates both to the disparity among judges in deciding what constitutes probation revocable conduct, and to the nature of the hearing. Failure on the part of some judges to deal with often serious probation violations undercuts the effectiveness of the probation function, and may impede the long-term

rehabilitation of the convicted offender. One means of improving the consistency of handling this post-disposition proceeding would be for the Superior Court to devote attention at one of the upcoming court-wide quarterly training conferences to this important issue. An additional procedural issue concerns appointed defense counsel compensation for appearing at such hearings, and the inconsistent policies used by Superior Court judges in this area.

Recommendation: The Court Study Committee recommends that the Criminal Division Administrative Judge together with the Social Service Division leadership, and defense and prosecution representatives review the existing probation revocation hearing practices with the objective of making these proceedings more effective. Use of a portion of one of the court-wide training conferences to improve the consistency of these proceedings, across the court, might also be considered.

In concluding this brief subsection it is appropriate that the Committee take note and commend the staff and judges of the Criminal Division for the increasing degree of interdependence and team work being exhibited in conducting the affairs of the Division. The Court Study Committee was very encouraged by the positive spirit and cooperative attitude it observed on the part of the judges, Clerks' office and other Court staff involved with the Criminal Division.

B. Calendar Management Issues Primarily Beyond the Control of the Superior Court

The beginning of the previous subsection identified a variety of factors external to the Superior Court Criminal

Division which may adversely affect the capacity of Court to dispose of cases in a timely fashion. Three such extra-Court entities whose activities particularly impact the criminal court calendar are the U.S. Marshal's handling of prisoner movement, the U.S. Attorney's Office inconsistencies in handling discovery and in managing their misdemeanor calendar, and defense bar scheduling problems.

Responsibility for prisoner movement within the D.C. Courthouse rests with the U.S. Marshal's Service. The efficient and timely movement of detained prisoners is a vitally important element in the management of the criminal calendar within the Superior Court. The Court Study Committee was informed by a number of judges and counsel of the serious delays experienced on occasion in getting prisoners brought up to a courtroom for a hearing. These delays were believed to be largely a function of workload demands on the Marshal's Service which were greater than the staff could reasonably handle.

An additional element in the prisoner movement area is the safety of the Marshals' themselves in performing their functions for the Court. Interviews noted the serious potential danger involved in handling prisoner movement, and the sometimes dangerous behavior of the detained prisoners while at the D.C. Courthouse.

The Court Study Committee has monitored the budgetary and jurisdictional plights of the Marshal's Service as it relates to the Superior Court. A temporary fiscal reprieve

was granted the Court in late 1981 by the U.S. Justice Department not reducing sharply the availability of U.S. Marshals to the Superior Court. However, the Committee believes that until the District of Columbia as a jurisdiction controls directly the marshal function, control of the criminal court calendar can not be achieved.

Recommendation: The Court Study Committee recommends that the prisoner movement and related marshal's functions in the D.C. Superior Court be performed by a D.C. Marshals Service and that the U.S. Congress enact appropriate enabling legislation to bring about such a transfer of jurisdiction within the next two years.

Prosecution of misdemeanor and felony offenses before the D.C. Superior Court is the responsibility of the Office of the U.S. Attorney for the District of Columbia. That office has pioneered in a number of important criminal case management improvements and other reforms over the past ten years.

A number of interviews conducted by the Court Study Committee surfaced concerns about aspects of the criminal court caseload where the prosecution is involved. The training and effectiveness in managing a caseload appears to be particularly uneven in the instance of those U.S. Government Attorneys who are specially assigned to the Office of the U.S. Attorney for short periods of time. Similarly the practices of the Office of the U.S. Attorney regarding the timing and the extent of discovery varied widely from prosecutor to

- 39 -

prosecutor, and was reported to be particularly restrictive when involving the Special Assistant U.S. Attorneys.

Finally, concern was voiced in some interviews as to the lack of experience of some Assistant U.S. Attorneys serving in the misdemeanor court, and the adverse impact those prosecutors' inexperience in calendar management was having on the ability of Superior Court judges to perform their case management functions in this area.

Recommendation: The Court Study Committee recommends that the Office of the U.S. Attorney review its staff training programs, and supervisory orientation practices with the objective of improving the consistency of Assistant United States Attorneys handling of the case management and discovery functions. Particular attention should be directed to more close supervisory monitoring of Assistant U.S. Attorney performance in the misdemeanor court. Additionally defense counsel should be encouraged to consult with supervisory staff in the U.S. Attorney's Office when discovery problems arise.

The subject of attorney scheduling and conflicts in attorneys scheduled courtroom appearances appears to be receiving ongoing attention by the Superior Court and various bar groups. The Court Study Committee understands that a recent procedural step taken by Chief Judge Moultrie to improve this area has worked well. At the same time the Committee is concerned that some counsel are consciously absent from the criminal courtroom when their case is to be considered as a matter of case strategy. Where the Court learns that this is taking place appropriate steps should be taken to eliminate this unlaywerlike behavior.

A final issue in the attorney scheduling area concerns the possible application of modern technology to facilitate daily Criminal Division courtroom caseflow. The Court Study Committee was informed that attorney scheduling issues contribute substantially to delays occurring each business day in the courtrooms of the Superior Court Criminal Division. Appointed Criminal Justice Act (CJA) defense counsel, who often handle a number of separate criminal cases in different courtrooms on the same day, are not always in the courtroom when their case is called. This requires the Court to adjust the daily calendar passing over the case until the attorney can be in court. Thus, an attorney may be waiting for his/her case to come up "momentarily" before one judge, while in an adjacent courtroom another judge may call a second case involving the same attorney. This situation is reported to be more prevalent with the most active CJA attorneys who appear daily in the Criminal Division courtrooms than with other segments of the prosecution or defense bar. (It is estimated that no more than forty CJA attorneys fall into the most active category, and that they handle a large share of the defense representation in the Criminal Division.)

Within the past five years a variety of low cost portable paging devices have become commercially available. Many of these machines fit easily within a coat pocket, and are designed to be unobtrusive in use. The suggestion was made to the Committee, in conjunction with the calendaring

problems in the Criminal Division, that if the most active CJA attorneys could be issued portable paging devices for use within the D.C. Courthouse, many delays now experienced each day could be ameliorated. One procedure proposed would involve the courtroom clerk calling the existing central courthouse switchboard when an attorney was needed in a specific courtroom in connection with a case. The central switchboard in turn would page the particular attorney using the portable device the attorney had "checked out" for that day from the information counter. If the attorney was not engaged in a proceeding in another courtroom he/she would call the switchboard, get their message and proceed to the courtroom where they are needed. (Similar procedures have been in use for some time in hospitals and other settings where mobility of operation is required.

Recommendation: The Court Study Committee recommends that the Criminal Division Administrative Judge, together with representatives of the CJA Bar, and other court units, explore the feasibility of instituting a paging system to facilitate defense attorney availability in Criminal Division courtroom proceedings.

SECTION III SENTENCING

In the period since the implementation of the 1970 D.C. Court Reform Act a number of procedural approaches have been developed and employed in the Superior Court Criminal Division to improve the sentencing function. Former Chief Judge Harold H. Greene initiated several sentencing institutes whereby judges and other court personnel explored various subjects germane to sentencing in criminal cases. Chief Judge H. Carl Moultrie I, has continued this initiative more recently with a Fall 1981 sentencing institute.

In addition to periodic sentencing institutes, related judicial training, and continuing education in the sentencing area, other steps have been taken by the Superior Court to facilitate consistency in sentencing. Sentencing panels or councils, whereby two or three judges come together to discuss and consider collectively what an offender's sentence should be, to a limited degree have been experimented with in the Superior Court. Finally, the Superior Court is reported to have the information management capacity to enable a judge faced with a particular sentencing decision to determine how similar cases have been sentenced by the same judge in the past.

Despite the presence of a number of positive and constructive tools for facilitating greater consistency in criminal cases sentencing, the Court Study Committee has been informed by a number of attorneys that they have observed serious sentencing disparity in the Superior Court. While

empirical sentencing research on the D.C. Superior Court has discerned that, . . . "sentences are more harsh for cases involving more serious offenders with more serious criminal records"; serious disparity in Superior Court sentencing was noted, however, in this same context. To wit, "among the 28 judges who accounted for 97 percent of all felony sentencing decisions in the Superior Court in 1974, the 13 harshest sentencers incarcerated 60 percent of the convicted defendants, while the 15 more lenient sentencers incarcerated 46 percent."⁹

Sentencing related legislative recommendations have been developed in the District of Columbia by the D.C. Law Revision Commission in the proposed D.C. Criminal Code. Included within the refinements to this proposal is a system of sentence guidelines, a so-called quasi-determinate sentencing scheme. No legislative action has been taken by the Council of the District of Columbia as yet with regard to the adoption of a new criminal code.

A final dimension of the sentencing subject to note with regard to the Superior Court is the possible development and use of "sentencing guidelines" whereby individual judges could compare the sentencing decision they face with similar past decisions by other judges of the Court. With the existing

⁹ Forst, Brian. Testimony Before Committee on the Judiciary, Council of the District of Columbia. April 17, 1980. INSLAW. p. 4 Washington D.C. (Unpublished).

machine and software capability found in the prosecution management information system (PROMIS), many of the elements necessary to perfect a "sentencing guideline" approach in the D.C. Superior Court presently exists. (The reader is referred to a relevant 1978 INSLAW PROMIS Research Report in this area by Terence Dungworth, An Empirical Assessment of Sentencing Practices in the Superior Court of the District of Columbia, particularly Chapter 8.)

The Court Study Committee favors the early development and use of "sentencing guidelines" by the judges of the Superior Court Criminal Division. Such empirically based data about past sentences the Court has given for similar type cases and offenses would provide judges with valuable advisory information as they make individual sentencing decisions. The need for sentencing guidelines would be obviated were the District of Columbia Council to adopt the proposed criminal code revisions. However, the present and continuing uncertainty as to adoption of the new criminal code underscores the necessity to implement an advisory sentencing guideline mechanism promptly.

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division adopt a system of Sentencing "Guidelines" which judges should consult as they consider individual cases.

Recommendation: The Court Study Committee recommends that research be undertaken by appropriate groups to determine the sentencing practices of the Superior Court, and whether serious disparity exists.

SECTION IV WITNESS MANAGEMENT

Cooperation by witnesses is a vital factor in assuring effective operation of the criminal court. It is ironically true, however, that witnesses frequently have been treated indifferently throughout the criminal justice process. The landmark study, Witness Cooperation, by Frank Cannavale and William Falcon, for the Institute for Law and Social Research⁸⁸ found that this lack of sensitivity to the special problems of witnesses is the central reason for their failure to cooperate with police and prosecutors.

Official indifference toward witnesses can manifest itself in many ways. Names and addresses of witnesses have been incorrectly recorded by police or persons in the prosecutor's office. Witnesses ignorant of their role and responsibilities in the judicial process have had insufficient access to needed information. Inadequate notification procedures have often prevented witnesses from learning the current status or the disposition of the cases in which they are involved. The inconvenience and unpleasantness of spending excessive time at the courthouse have caused persons to become uncooperative after their first experience as a witness.

⁸⁸ Cannavale, Frank J. Jr. and William Falcon. Witness Cooperation The Institute for Law and Social Research. Lexington Books, D.C. Heath & Company, Lexington, Massachusetts, 1976.

The United States Attorney's Office formed a Victim-Witness Assistance Unit ("Witness Unit") to resolve some of the witness management problems that have beset the District of Columbia Court System.

A. Problems With Witness Management

The problem of witness notification as to scheduling changes, witness conferences, and changes in the status of the case (including the fact that a case has been dropped) is a serious and important responsibility in the management of witnesses. In the past, notification procedures have been haphazard, communications' breakdowns frequent, with the result that the witness bears the brunt of the burden caused by systemic inefficiency. Frequently, witnesses have not been contacted at all during the interval between the crime and the period immediately preceding trial.

Recommendation: The Court Study Committee recommends that the Witness Unit of the U.S. Attorney assume full responsibility for notifying felony and misdemeanor witnesses as to any and all appearances and material case status changes.

The attitude and manner of the police officer toward the witness is vital to encouraging witness cooperation. The INSLAW study What Happens After Arrest⁵¹ found that in 1974

⁵¹ Forst, Brian, Judith Lucianovic, and Sarah J. Cox. What Happens After Arrest? A Court Perspective of Police Operations in the District of Columbia. Institute for Law and Social Research, Washington, D.C. 1977.

over 50% of all arrests leading to conviction were made by only 15% of all arresting officers. This same study showed the positive correlation between a number of cooperating witnesses and the rate of conviction. This evidence demonstrates the importance of proper police treatment of witnesses. The individual police officer is often the only official in the criminal justice system who has the opportunity to establish a one-to-one relationship with a witness. Thus, it is essential that the officer be aware of his/her role in facilitating cooperation from witnesses. Recording the correct names and addresses of witnesses is a threshold requirement for future witness cooperation. Thirty-eight percent of all cases were found to be dismissed because of the failure of witnesses to cooperate. The police officer is the most essential person in any witness management program. A police officer who does this well should be recognized and rewarded just as police officers are recognized and rewarded when they do other parts of their job well.

Recommendation: The Court Study Committee recommends that police training include teaching effective witness management, and that performance with respect to witness management be a part of the routine evaluation of a police officer's overall performance.

The INSLAW Cannavale study⁵² found that witnesses are often apprehensive and confused after the crime. Effective police treatment of witnesses includes informing them of their

⁵² Op. cit.

future role at the time of the police interview. Witnesses, nonetheless, have a need for a written pamphlet they can retain which answers most frequently asked questions, and provides other general information. Such a handbook should include transportation maps, child care information, and a number to call at which a Witness Unit staff member is available to answer questions. The Committee understand that the U.S. Attorney's office has prepared such a witness handbook containing the necessary general information, and we commend these efforts.

A witness often needs personal contact that printed matter cannot provide. Additional information or counseling to aid a confused, frightened, or apathetic witness is often an important factor in gaining his/her cooperation. Due to budgetary restrictions, current plans for the Witness Unit provide that the paralegals will provide this assistance solely to witnesses associated with felonies. This assistance should be extended to witnesses of misdemeanors as well. Because the police are often the only witnesses of misdemeanors, and do not need such assistance, extending the counseling and information function of the Witness Unit to all witnesses should not increase the workload of the Unit greatly.

Recommendation: The Court Study Committee recommends that the Witness Unit's services be made available to provide information and counseling to both felony and misdemeanor witnesses, and in addition that all prospective witnesses routinely be provided with a handbook describing witness procedures and answering common questions.

Time spent by a witness in court or in pre-trial conferences generally means lost earnings. A witness is compensated for this time at the rate of \$30 per day. Although current procedures require only that the witness present a voucher in order to receive payment, many witnesses apparently are unaware that they can be reimbursed for time spent in court and at witness conferences with prosecutors. Thus, it is important that a witness be informed early in the process that he/she will receive compensation.

Recommendation: The Court Study Committee recommends that witnesses be informed early in the process that they are eligible to receive compensation for their service as witnesses.

The Cannavale study found that one of the main complaints of witnesses was the amount of time spent at the courthouse before testifying. One reason is the practice that requires a witness to spend the whole day in court if there is any chance he/she might be called to testify. The use of "on call" subpoenas requiring that a witness be available on short notice to come to court lessens this waiting time. The Witness Unit should administer an "on call" subpoenas program, at least on a trial basis.

Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office improve subpoena procedures to minimize time unnecessarily spent in court by witnesses; and that the Witness Unit institute an experimental "on call" subpoena system.

SECTION V OTHER CRIMINAL TRIAL COURT ISSUES

The Court Study Committee's review of the Superior Court in the criminal area focused primary attention on the subjects referenced in preceding sections. At the same time the Committee did identify other facets of the criminal trial court which also bear mention. The discussion which follows touches on some of these areas.

With regard to the adult probation area the Court Study Committee lacked analytic resources to undertake a thorough examination of this vital Superior Court function. At the same time interviews conducted by the Committee revealed concern in some quarters about the adequacy and timeliness of the Social Service Division's presentence reports in the past two years, and the adequacy of supervision for those sentenced to probation. A brief review of caseload and Social Service Division staffing over the 1975 to 1981 period reveals that the average monthly adult supervision caseload has increased nearly 100 percent (3774 cases in 1975, 7229 cases in 1981) while available probation staff resources have been reduced by more than fifteen percent during the same period.

One area of potentially significant workload impact on the adult probation area of the Superior Court Social Service Division relates to the August, 1981 enactment of a D.C. Uniform Controlled Substances Act. While it may be premature to ascertain long term probation caseload trends

resulting from the existence of this Act, early indications are that as many as 200 to 300 additional drug cases are entering the Superior Court each month when compared with a year ago.

While the most appropriate disposition for many convicted persons in the Superior Court may be probation, the Court Study Committee is concerned as to the level of meaningful support and supervision probationers can expect to receive in an environment of continually greater caseloads, and fewer or static staffing patterns.

Recommendation: The Court Study Committee recommends that the Superior Court leadership, including the Director of Social Services and the Court Executive assess the capacity and resource needs of the Social Service Division to perform its functions.

Section II of this Report examined a number of issues relating to the calendar management of the Criminal Division. Topics ranging from discovery to continuance practices were noted. To a degree, while early dispositional data on the individual calendar misdemeanor program are very impressive -- a 39% increase in dispositions in the first year when compared with the previous year -- this "success" may be exacted at a longer term price which will diminish the program's true value. Specifically, the Committee was informed of Superior Court Criminal Division judges hearing misdemeanor cases who have active calendars of as many as 500 assigned cases or more. Such a judicial workload by any reasonable standard can not be

sustained, and no doubt in turn contributes to counsel frustrations as to cases not going to trial, etc. The Court Study Committee believes the misdemeanor judicial caseloads must be reduced to below 300 cases per judge in order for the individual calendar system to function effectively over a longer period, and in order to not tax unduly the capacities of the judges and supporting staffs handling these cases.

The Committee is also concerned that the felony caseload levels judges handle in the Superior Court may be greater than reasonable standards would prescribe. The Committee understands that some felony judges have substantially more than 125 cases on their individual calendar. The Committee believes a felony calendar level approaching 100 cases is much more prudent, particularly if the Court and this community are serious about meeting the constructive felony case processing goals which have been announced by Chief Judge Moultrie.

Recommendation: The Court Study Committee recommends that the Criminal Division judicial leadership direct an examination of the judicial caseload area and develop proposed felony and misdemeanor judicial caseload standards. Such standards, once developed, may provide further evidence of the staffing levels required by the Division to perform its functions within reasonable time limits.

A further area noted in several Committee interviews was the existing statutory right to a jury trial for many less serious misdemeanor offenses. One element of the jury trial right for certain less serious crimes is the existing penalty

structure as contrasted with actual experience regarding judicial dispositions for such cases. The Committee was informed that it is rare for persons convicted of so-called petty offenses to receive jail time, and where imprisonment is ordered the sentence duration is usually 90 days or less.

Statistically, research in other jurisdictions has demonstrated that a trial judge can conduct five non-jury trials a day, or one jury trial a day. Thus, were the D.C. Council to adopt changes in the offense penalties for certain misdemeanors such that the absolute right to a jury trial was reserved for the more serious offenses, no doubt it would have a very significant impact on the Superior Court criminal calendar. (Stated differently, if this community believes that in criminal cases a prompt court hearing and disposition are necessary for overall public safety and general welfare, then given the past and projected future criminal court workload, either additional judges and support staff are required, or steps such as altering the defenses where a jury trial right is assured must be taken.)

In an environment where the misdemeanor caseload appears to be growing, and given that individual judicial caseloads are already very heavy, serious legislative attention should be given to this issue promptly.

Recommendation: The Court Study Committee recommends that the D.C. Council consider whether to revise the penalty structures for certain minor criminal offenses with one objective being reducing the number of offenses where an absolute jury trial right is preserved.

The Court Study Committee also discussed in several earlier reports the divisional administrative judge development. (This concept was introduced in the D.C. Superior Court by Chief Judge Moultrie in the Fall of 1978.) Again, the Committee makes note in the criminal trial area of the potential of this position and the good effect with which first Judge Tim Murphy and currently Judge Fred B. Ugast, have performed in this increasingly important leadership position within the Superior Court Criminal Division. As this Committee noted in Section Two of this report, one of the most positive trends we observed in researching and preparing this report was the increased level of support, mutual respect, and cooperation evidenced by the judges and clerks office personnel in the Criminal Division. A good part of the credit for this development, we believe, is related to the presence of one judge within the Division serving as a focal point to handle administrative issues in addition to performing his/her other judicial responsibilities. We commend Judges Murphy and Ugast for their efforts to foster an increased spirit of cooperation and interdependence on the part of those working in the Criminal Division.

The final criminal trial court issue identified by the Court Study Committee is the availability of supportive criminal defendant-related drug abuse information and services. Information services noted here relate to the need Superior Court Criminal Division judges have for reliable data about defendant's drug use at the time of the initial court appearance,

and later. For the past ten years almost all persons arrested in the District of Columbia who were detained in the D.C. Superior Court lock-up facility prior to their initial court appearance provide, through urinalysis and interview data, information about their drug use. These data are provided the Court by the Department of Human Services, Alcohol and Drug Abuse Services Administration (ADASA) for use in deciding pretrial release and for other subsequent decisions.

Recent empirical research in the District of Columbia has found that drug use in connection with any type of arrest is a significant predictor of recidivism.⁵³ It is essential that Criminal Division judges continue to receive full drug use information on defendants appearing before them. This same research found that Superior Court judges were using the urinalysis results to determine whether a defendant is a high risk of failing to appear in court.⁵⁴

The Court Study Committee is also concerned that available drug rehabilitative services for alleged and convicted criminal defendants are being heavily taxed at present to the point where Superior Court judges are effectively precluded from referring suspected drug-users to needed drug treatment services and programs.

⁵³ Wish, Eric D. et al. An Analysis of Drugs and Crime Among Arrestees in the District of Columbia: Executive Summary. INSLAW, December, 1980. pg. 3.

⁵⁴ Ibid. pg. 15.

- 56 -

Recommendation: The Court Study Committee recommends that defendant-related drug information be routinely provided to Superior Court Criminal Division judges, particularly in the arraignment court-proceeding, and that the Court have access to adequate drug treatment services for drug dependant defendants.

SECTION VI THE CRIMINAL JUSTICE ACT PROGRAM

A. History and Background

Following transfer of jurisdiction from the U. S. District Court to the D. C. Superior Court of all criminal offenses proscribed by the D. C. Code, Congress in September 1974 enacted a statute (11 D.C. Code § 2601 et seq.) authorizing the recently established D. C. Court of Appeals and D. C. Superior Court to implement a Criminal Justice Act plan for furnishing representation to indigents accused of crimes. This statute essentially paralleled the Federal Criminal Justice Act (18 U.S.C. § 3006A) which remains in force in the federal courts.

In 1975, a joint committee of the D. C. Bar and the Judicial Conference of the D. C. Circuit (hereinafter the "Austern-Rezneck Committee") completed an exhaustive study of the system in the District of Columbia for provision of criminal defense services, and published a report making a number of substantial recommendations for restructuring the system. The most significant conclusion reached by the Austern-Rezneck Committee was its determination that continued judicial control over the administration of the Criminal Justice Act (CJA) is inherently undesirable because of its actual and potential damage to the independence of the defense bar and, thus, to the quality of representation. The Committee concluded, after extensive interviews with judges and attorneys and after analyses of appointment, compensation and discipline of counsel, that the

exercise of judicial authority over appointment, removal, and compensation of counsel, as well as over provision of investigative and expert services for the defense, has a chilling effect on the vigor of defense representation. Moreover, the haphazard manner in which CJA appointments were (and still are) made, the absence of uniform qualification standards for attorneys handling criminal cases, and the individualized exercise of discretion by the trial judges all contribute to a situation where the potential for abuse is great and the institutional capacity to ensure fairness and effective defense representation is virtually non-existent.

Based on its analysis of the full spectrum of problems associated with court administration of the Criminal Justice Act, the Austern-Rezneck Committee made the following major recommendations:

1. Establishment of an independent agency governed by a board of trustees to take on the Superior Court's role in administering the appointment, compensation, and discipline of appointed counsel and all ancillary services related to criminal defense representation.

2. Establishment of certification standards for attorneys to be eligible for CJA appointments, monitoring of the performance of appointed counsel, and establishment of continuing legal education programs.

3. Establishment of higher rates of compensation for appointed counsel, defense experts, and defense investigators in all categories of criminal defense representation.

These recommendations and the analyses upon which they are based laid the foundation for further work in this area by an advisory subcommittee of D. C. Superior Court (known as the "Braman Committee")⁵⁵ and a committee of the D. C. Bar (the "Forrest Committee"). These two committees, working together, presented a comprehensive plan to the Board of Judges of the D. C. Superior Court in mid-1980. The Board approved the plan in most essential respects on September 10, 1980 and the Joint Committee on Judicial Administration followed suit on April 21, 1981.⁵⁶ Since that time, the Chief Judge of Superior Court has been working on implementing those provisions which do not require legislative action.⁵⁷

B. Elements of the New CJA Plan

1. The Criminal Defense Agency

The most significant aspect of the CJA plan is its proposal for establishment of a D. C. Criminal Defense Agency

⁵⁵ Judge Leonard Braman has retired from the Superior Court, and Judge Robert Shuker is now chairman.

⁵⁶ One aspect of the Plan that remains to be approved pertains to the transfer from the Superior Court to the proposed criminal defense agency of the authority to supervise and authorize the compensation of counsel, experts, and investigation. Although these provisions were proposed in the original plan they were removed by the Board of Judges pending detailed consideration of the remaining elements of the CJA Plan.

⁵⁷ It is, of course, understood that until the plan is implemented the provisions of the 1974 C.J.A. Plan would remain in effect.

- 60 -

(hereinafter Agency) to which the Court's current authority over appointment of counsel would be transferred. The plan as approved by the Board of Judges and Joint Committee did not include transfer of authority over compensation. The ultimate objective would and should, in the Committee's view, be for the Agency to have responsibility over attorney compensation, as well, so as to ensure complete independence of the Agency in its administration of the CJA program.

The Agency would be governed by a Board of Trustees appointed by a panel representative of the judiciary, the bar, and the community. No single group on this eight-member appointing panel would be predominant, thus ensuring the independent character of the nine-member Board of Trustees. The exclusion from Board membership of judges, prosecutors, and persons employed by law enforcement agencies offers further assurance of Agency independence.

The proposal incorporates the concept of a "mixed" system where representation for criminal defendants would continue to be provided by both private attorneys and lawyers from the Public Defender Service (PDS). The Agency would not supplant PDS, but would merely take over those administrative functions now handled by PDS's Office of the CJA Coordinator pursuant to 2 D.C. Code 2222(b).

The Board of Trustees would have authority to hire the Director and Deputy Director and would be responsible for

- 61 -

setting overall policy for the Agency. The Director, in turn, would be responsible for hiring the staff and managing the day-to-day operations of maintaining the CJA attorney panels, determining the eligibility of defendants for appointment of counsel, making case appointments, and issuing, processing and approving vouchers--that is, carrying out the functions and responsibilities set forth in the rest of the proposal. It is contemplated that the resources now allocated to these functions in the D.C. Courts and the Public Defender Service would be transferred to and consolidated in the new Agency.

2. Mechanisms for Ensuring Quality
Defense Representation

The CJA Plan addresses the issue of ensuring quality representation from several interrelated angles. Long-standing criticisms of the present system for appointment and removal of counsel are that: (a) there are no certification or qualification standards for assigned counsel; (b) there are no provisions for requiring continuing legal education (CLE); (c) there are no standards of practice to which counsel taking cases under CJA are held accountable; and (d) there is no meaningful and effective disciplinary machinery for removal of counsel from individual cases and suspension from CJA practice. The proposal addresses each of these areas.

- 62 -

(a) Attorney Panels

The Plan sets forth objective criteria for each category of case^{**} in the adult criminal, juvenile and traffic branches whereby attorneys would qualify for certification to a given panel based on their levels of criminal trial experience and other relevant criteria. The certification standards for each panel above the non-jury misdemeanor level are designed to apply to all counsel seeking CJA appointments (whether regular defense practitioners or not) and, yet, at the same time, to permit non-regular CJA practitioners to qualify for the respective panels by co-counseling with experienced and fully qualified attorneys. Thus, the certification standards aim at the twin goals of ensuring uniformity in qualifications of counsel while, simultaneously, leaving the door open to new talent without diluting these standards.

(b) Continuing Legal Education

The qualification standards described above also contemplate the establishment of orientation and CLE programs at each panel level. Not only does the plan call for CLE as a prerequisite for admission to a panel, but it also contemplates that attorneys who have qualified for a given panel will have to keep up their skills and knowledge by taking designated CLE courses in order to maintain their position.

^{**} These categories are: Non-jury Misdemeanors, Jury Demandable Misdemeanors, Felonies, and Serious Felonies.

(c) Defense Practice Standards

The absence of specific practice standards has been cited repeatedly over the years as an excuse for not taking action against errant CJA attorneys. The plan remedies this situation by establishing a body of practice standards that sets out what every appointed attorney is required to do, or consider doing, (1) at arraignment or presentment, (2) on bond review, (3) on case investigation, (4) on discovery, (5) on motions practice, (6) on maintaining client contact, (7) on trial preparation, (8) at sentencing, and (9) with respect to appeal.

The practice standards spell out in the form of a checklist what the ABA standards on The Defense Function mean in practical terms. The objective is to ensure that every attorney who seeks enrollment on a CJA panel becomes familiar with both the ABA standards and the standards articulated in the plan, and pledges to observe them in the handling of each appointed case. A dual benefit should result: (1) counsel will know precisely what is expected, and (2) specifically defined standards of practice will provide known benchmarks against which performance can be measured and evaluated in the event of grievance or disciplinary proceedings.

(d) Removal and Disciplining of Counsel

Even with the establishment of qualification panels, continuing legal education programs, and adoption of defense practice standards, there is no assurance that a high quality

- 64 -

of defense representation can be maintained without effective machinery for enforcement. Neither the Court nor the D. C. Bar Board on Professional Responsibility exercised a meaningful role in the discipline area in past years."

The plan therefore proposes an expansion of the jurisdiction of the Board on Professional Responsibility to permit that body to remove attorneys from CJA panels. It was the considered view of the plan's authors that the sanction of removal from CJA panels for violations of the practice standards and other ethical obligations is crucial to ensuring effective defense representation and that the power and authority to exercise such sanction is most appropriately placed with the Board on Professional Responsibility.

3. Rotational System for Appointment of Counsel

In addressing the current lack of uniformity in the appointing process, the excessive judicial discretion in assigning counsel, and the substantial delays experienced by attorneys on the day of appointment, the plan calls for establishment of a rotational appointments system that would significantly alleviate these problems, or eliminate them altogether.

The rotational system would work essentially as follows: in the third week of each month, all attorneys wanting CJA appointments during the coming month would submit

" The Court Study Committee notes that the Board of Professional Responsibility recently added staff to screen more effectively complaints lodged against CJA attorneys.

- 65 -

a request form to the CJA Director indicating what types of cases they are qualified to take, how many assignments they want (and in what categories), and what dates they are unable to appear for appointment. The CJA Director will thereupon draw up and post a master panel list for the coming month setting forth in strict rotational order the dates on which attorneys must appear. The number of attorneys to appear on each court date will be limited to ensure that every attorney will be able to pick up approximately four cases at each appearance, unless the attorney indicates a desire to take less than the maximum number allowable for different categories of cases. Thus, for example, if 105 attorneys sign up for the coming month, 15 might be assigned to appear on each day to pick up the approximately 50 to 60 cases arraigned or presented on the average day until the entire list of 105 attorneys is exhausted, at which point the rotation order would begin anew. Using this example, therefore, the 15 attorneys who appeared on the first date would appear again on the eighth court date, the second 15 attorneys who appeared on the second court date would appear again on the ninth court date, and so on through the rotational order. In this example, then, each attorney would appear approximately three times a month to pick up a maximum of four cases each time for a maximum total of twelve cases for the month.

Appointments to cases would be made in strict rotational order, the only limitation being that an attorney cannot be assigned to a case beyond the severity level of the

highest panel for which he or she qualifies. Thus, only an attorney who is on the Serious Felony Panel can be appointed to a serious felony and to any case in a lower severity category.

The virtues of the proposed rotational system are clear: (1) the rules of appointment would be explicit and strictly enforced, ensuring equitable distribution of case assignments to attorneys previously determined to be eligible to receive them, (2) attorneys, whether regular or occasional CJA practitioners, would know well ahead of time what dates they must set aside for their appearances in arraignment court, and (3) wasted time would be substantially reduced (as would compensation claimed for waiting time) by the assurance that an attorney could pick up an average of three to four cases at each appearance.

C. Implementation of the CJA Plan

The Court, pursuant to existing authority under 11 D.C.Code § 2601 et seq., can implement many of the plan's provisions without further legislation. Specifically, it has the power under § 2602 to establish the attorney panels discussed in Section B.2(a) and the rotational appointment system referred to in Section B.3, above. Similarly, it is believed that the Court can delegate its authority to appoint counsel to the proposed Board of Trustees and the Agency director. Finally, it is believed that the Court has authority to direct the Public Defender Service's Office of the CJA Coordinator to implement the policies of the court in screening indigents for appointment of counsel and in administering various aspects of

- 67 -

the appointment process (see 11 D.C. Code § 2602 and 2 D.C. Code § 2222(b) and (d)).

Given these powers and the action of both the Superior Court Board of Judges and the Joint Committee on Judicial Administration in adopting the CJA plan, it is now incumbent on the Court to implement the plan. The Court Study Committee understands that the Public Defender Service has declined, to participate in the nominating process due to serious reservations about several legal questions which they do not believe have been answered. However, the Committee nevertheless believes that the Court should proceed to nominate a Board of Trustees without PDS participation so that implementation can be started on an interim basis.

Recommendation: The Court Study Committee recommends that the Superior Court promptly convene the nominating panel for appointment of a Board of Trustees so that the D. C. Criminal Defense Agency can be established and a director hired to implement the plan.

The Braman Committee, now chaired by Judge Robert Shuker, has yet to complete work on other aspects of the plan (designated as Unit II) dealing with levels of and procedures for compensation of counsel, expert witnesses and defense investigators. Also pending are proposed new standards for screening of indigent defendants to determine eligibility for appointment of counsel. This work should now be completed so that the Forrest Committee can review it and approval can thereupon be obtained from the D. C. Bar Board of Governors

(as was done with the basic plan), the Board of Judges, and the Joint Committee on Judicial Administration.

Recommendation: The Court Study Committee recommends that the Braman and Forrest Committees conclude their consideration of Unit II of the CJA plan so that the requisite approvals can be secured and implementation of the new procedures proposed in Unit II can begin.

The Austern-Rezneck Committee in its 1975 report on the administration of the Criminal Justice Act documented in detail the adverse impact of the low rates of compensation on the quality of defense representation.⁶⁶ That Committee recommended then that rates of compensation be raised from the current levels of \$20 an hour for out-of-court time and \$30 an hour for in-court time to a flat rate of \$40 an hour. It also recommended that the maximums allowable for misdemeanors be raised from the current \$400 to \$800 and for felonies from \$1,000 to \$1,600. It should be noted that the cost of living has increased by more than 60% since this recommendation was made and by greater than 90% since the rates were first set in 1970.

The D.C. Bar's Court Study Committee recognizes that legislative action is required to raise rates and maximum levels of compensation. Changing economic conditions during the ten

⁶⁶ Report on Criminal Defense Services in the District of Columbia by the Joint Committee of the Judicial Conference of the D. C. Circuit and the D. C. Bar (Unified) (April 1975) pp. 77-86.

- 69 -

year period since the rates were originally established make it even more imperative that prompt action be taken to rectify the situation. Thus, the Committee strongly supports all necessary steps being taken by the Superior Court, the Mayor, and the D.C. Council to raise promptly the levels of compensation for attorneys appointed under the Criminal Justice Act to at least the levels proposed by the Austern-Reznek Committee.¹¹

Recommendation: The Court Study Committee recommends that the D.C. Criminal Justice Act defense attorney compensation levels be increased promptly.

The above recommendations are, of course, addressed primarily to those portions of the CJA plan that can be implemented on an interim basis without legislative action. Ultimately, the D. C. Criminal Defense Agency must be established on a permanent basis and rest on a firm statutory footing. To accomplish this, 11 D.C. Code § 2601 et seq. and 2 D.C. Code § 2201 et seq. must be amended and a new statute enacted to create the Agency and formally transfer authority over appointments and compensation from the Courts and the Public Defender Service to the Agency.

¹¹ The Committee makes specific note of pending Congressional action to increase the hourly billing rates in the federal CJA program to \$30 an hour for out of court time, and \$45 an hour for in-court time. The per case ceilings are also to be raised under the proposed bills.

- 70 -

Recommendation: The Court Study Committee recommends that, as soon as Unit II has been reviewed and approved, the Forrest Committee prepare a comprehensive statutory proposal for submission to the D. C. City Council for establishment of a D. C. Criminal Defense Agency. The Committee further recommends that the D. C. Bar, the Courts, the Public Defender Service and other concerned organizations join forces in support of statutory enactment of the CJA Plan.

The D. C. Criminal Justice Act Plan is the product of several years of effort by many committees and individuals dedicated to the principles of effective defense representation. The Court Study Committee is persuaded that full implementation of the plan will relieve Superior Court of a substantial administrative burden that it ought not to carry, while, at the same time, enhance the quality and efficiency of criminal defense representation.

Every study to date of the operation of the appointed counsel program in the District of Columbia -- whether by the Court, the Judicial Conference, or the Bar -- has recommended ending the direct involvement of individual judges and the Court in the appointment and voucher review/approval functions. For the reasons cited in those earlier studies, and the information set forth in this section of the Criminal Trial Court Report, the Court Study Committee strongly supports the early transfer of the appointment and compensation approval functions from the D.C. Courts to an independent defense agency.

Recommendation: The Court Study Committee recommends the early transfer of the authority to appoint and to determine compensation of CJA counsel from the D.C. Superior Court to a statutorily created independent defense agency.

- 71 -

Appendix A

Persons Interviewed

1. David T. Austern, Esq.
Practicing Attorney
personal interview August 23, 1979
2. Honorable Sylvia Bacon
Associate Judge
D.C. Superior Court
personal interview April, 1980
3. Frederick B. Beane, Clerk
Criminal Division
D.C. Superior Court
personal interviews December 4, 1978, and October 6, 1981
4. Bruce D. Beaudin, Esq. Director
D.C. Pretrial Services Agency
personal interviews August 30, 1979, and May 27, 1980
5. Kirk Bowdin, Supervisory Marshal
Office of the U.S. Marshal
personal interviews August 8, 1979 and September 12, 1979
6. Karen Christensen, Esq.
Practicing Attorney
personal interview September 19, 1980
7. Anthony Fitch, Esq. Deputy Director
The Public Defender Service
personal interview November 4, 1981
8. Ernest Friesen, Esq. Director
Whittier College of Law Justice Institute
personal interview May 18, 1979
9. Henry F. Greene, Esq. Director
Superior Court Section
Office of the U.S. Attorney
personal interview June 22, 1978, and group interview
November 9, 1979
10. Jack Hausner
Institute for Law and Social Research
telephone interview November 5, 1981
11. Honorable Gladys Kessler
Associate Judge
D.C. Superior Court
personal interview April, 1980

Appendix A. continued

12. Tom Lane
Institute for Law and Social Research
personal interviews March 19, 1979, and May 9, 1980
13. John March, Deputy Clerk
Criminal Division
D.C. Superior Court
group interview December 4, 1978
14. Patrick Hickey, Esq. Director
The Public Defender Service
personal interview September 12, 1978
15. Herbert Miller, Esq.
Practicing Attorney
personal interview February 20, 1980
16. Larry Moss, Officer
Metropolitan Police Department
personal interview February 13, 1980
17. Honorable Tim Murphy
Associate Judge
D.C. Superior Court
personal interviews October 20, 1978, and November 9, 1979
18. Robert Mosteller, Esq.
Practicing Attorney
group interview September 19, 1980
19. James Owens, Esq. Chief
Misdemeanor Section
Office of the U.S. Attorney
group interview November 9, 1979
20. Betsy Reveal, Director
Office of Criminal Justice Plans and Analysis
personal interview July 26, 1979
21. Edward Ross, Esq. Director
Superior Court Section
Office of the U.S. Attorney
personal interview November 5, 1981
22. Honorable Fred B. Ugast
Associate Judge
D.C. Superior Court
personal interview October 6, 1981, and telephone interview
November 11, 1981

Appendix A. continued

23. Honorable Ricardo Urbina
Associate Judge
D.C. Superior Court
telephone interview December 15, 1981
24. Alan M. Schuman, Director
Social Service Division
D.C. Superior Court
personal interview November 13, 1981

Bibliography

- Aaronson, David E., Bert H. Hoff, et al. The New Justice: Alternative to Conventional Criminal Adjudication. Institute for Advanced Studies in Justice. The American University, Washington, D.C., 1975.
- Abrams, Norman. Administrative Process Alternatives to the Criminal Process. The National Center for Administrative Justice, Washington, D.C., 1979.
- Ames, Nancy L., Kenneth E. Carlson, et al. The Processing of Federal Criminal Cases Under the Speedy Trial Act of 1974 (as amended 1979). Abt Associates, Inc., Cambridge, Massachusetts, July 1980.
- Brosi, Kathleen B. A Cross City Comparison of Felony Case Processing. Institute for Law and Social Research, Washington, D.C., January 1979.
- Burger, Warren E., Chief Justice, U.S. Supreme Court. "How to Break Log Jams in Courts", interview in U.S. News and World Report, December 19, 1977.
- Cannavale, Frank J., Jr. Witness Cooperation, The Institute for Law and Social Research. Lexington Books, D.C. Heath and Company, Lexington, Massachusetts, 1976.
- Criminal Justice Act Committee of the Superior Court of the District of Columbia. Memorandum to Board of Judges re: Final Report on Pilot Attorney Program. D.C. Superior Court, Washington, D.C. November 23, 1977. Unpublished.
- D.C. Superior Court, Social Service Division. Division and Branch Objectives 1981. Social Services Division, D.C. Superior Court, Washington, D.C., 1981. Unpublished.
- D.C. Superior Court, Social Services Division. An Analysis of the Social Services Division Adult Services Caseload. Social Services Division. D.C. Superior Court, Washington, D.C., 1981. Unpublished.
- District of Columbia Government. Justification for the FY 1979 Budget: Prepared for Committee on Appropriation, U.S. Congress. Government of the District of Columbia, Washington, D.C., March 1978.
- District of Columbia Office of Criminal Justice Plans and Analysis. Crime and Justice Profile: the Nation's Capitol. Government of the District of Columbia, Washington, D.C., July 1979.

Appendix B

- 75 -

- District of Columbia Office of Criminal Justice Plans and Analysis. 1970 Comprehensive Plan for Law Enforcement and Criminal Justice in the District of Columbia. Government of the District of Columbia, Washington, D.C. December 1970.
- District of Columbia Office of Criminal Justice Plans and Analysis. 1978 Comprehensive Criminal Justice Plan. Government of the District of Columbia, Washington, D.C., January 1978.
- Dungworth, Terence. An Empirical Assessment of Sentencing Practices in the Superior Court of the District of Columbia, Institute for Law and Social Research, Washington, D.C., July 7, 1978.
- Forst, Brian. Testimony before Committee on the Judiciary, Council of the District of Columbia on the District of Columbia Basic Criminal Code Act of 1979. Washington, D.C., April 17, 1980.
- Forst, Brian. The Reform of Sentencing. The Institute for Law and Social Research, Washington, D.C., September 1979.
- Forst, Brian and Charles Wellford. "Punishment and Sentencing: Developing Sentencing Guidelines Empirically from Principles of Punishment." Rutgers Law Review, Volume 33, Number 3, Spring, 1981
- Forst, Brian. Judith Lucianovic, and Sarah J. Cox. What Happens After Arrest? A Court Perspective of Police Operations in the District of Columbia. Institute for Law and Social Research, Washington, D.C. 1977.
- Friesen, Ernest C., Joseph Jordan, and Alfred Sulmonetti. Arrest to Trial in Forty-five days: A Study of Delay in Metropolitan Courts During 1977-1978. Whittier College School of Law, Los Angeles, California, 1978.
- Greene, Harold H., Chief Judge, Superior Court of the District of Columbia. Report on the Status of the Superior Court and Improvements in Judicial Administration, letter to D.C. Judicial Nomination Commission, Washington, D.C., February 2, 1977. Unpublished.
- Greene, Harold H., Chief Judge, Superior Court of the District of Columbia. Memorandum to the Judges re: Criminal Calendar. D.C. Superior Court, Washington, D.C., December 5, 1972. Unpublished.

Appendix B

- 76 -

- Greene, Harold H., Chief Judge, Superior Court of the District of Columbia. Special Report on the Operations of the Superior Court of the District of Columbia. Unpublished letter to Mayor Walter E. Washington, Washington, D.C. November 10, 1971.
- Greene, Harold H., Chief Judge, Superior Court of the District of Columbia. Report on Status of Superior Court after Completion of Final Phase of Reorganization following District of Columbia Court Reorganization Act of 1970. Unpublished letter to U.S. Attorney General. D.C. Superior Court, Washington, D.C., August 28, 1973.
- Greene, Harold H., Chief Judge, Superior Court of the District of Columbia. Report of Actions and Recommendations of the Court of General Sessions in response to report of President's Commission on Crime in D.C. Unpublished letter to U.S. Attorney General, Washington, D.C., March 23, 1967.
- Greene, Henry F., Director, Superior Court Operations, United States Attorney. "Letter to Judge William E. Stewart, Jr. in re Court Calendar Control System." Washington, D.C. August 19, 1977. Unpublished.
- Hausner, Jack and Michael Seidel. An Analysis of Case Processing Time in the District of Columbia Superior Court. Inslaw, Inc. Washington, D.C., 1981.
- Inslaw, Inc. Arrest Convictability as a Measure of Police Performance. Inslaw, Inc., Washington, D.C., April 23, 1981.
- Institute for Law and Social Research. Descriptive Information for Standards and Goals Development: Court Case Scheduling; Defense Services for Indigents; Pretrial Release. Institute for Law and Social Research, Washington, D.C., July 9, 1976.
- Institute for Law and Social Research. Guide to Court Scheduling: A Framework for Criminal and Civil Courts. Institute for Law and Social Research, Washington, D.C. 1976.
- Joint Committee of the Judicial Conference of the D.C. Circuit and the D.C. Bar (Unified). Report on Criminal Defense Services in the District of Columbia. Washington, D.C. April, 1975.
- Kiernan, Laura A. "D.C. Defendants Keep Court Dates, U.S. Study Shows." The Washington Post. January 15, 1979.

- Locke, J.W., H.R. Millie and R.T. Penn. Analysis of Paperwork Policies and Procedures of the Criminal Clerk's Office District of Columbia Court of General Sessions. Institute for Applied Technology, National Bureau of Standards, Washington, D.C., December 1969.
- Moultrie, H. Carl I., Chief Judge, Superior Court of the District of Columbia. Memorandum to the Judges No. 40: Re: Individual Calendar in Misdemeanor Criminal Cases. D.C. Superior Court, Washington, D.C., December 11, 1979. Unpublished.
- Moultrie, H. Carl I., Chief Judge, Superior Court of the District of Columbia. Overview of Operations and Objectives of the D.C. Superior Court. Speech to D.C. Judicial Conference, Washington, D.C., June 11 and 12, 1981.
- Moultrie, H. Carl I., Chief Judge, Superior Court of the District of Columbia. Statement on Priorities. Superior Court, Washington, D.C., July 7, 1978.
- Nimmer, Raymond T. The Nature of System Change Reform Impact in the Criminal Courts. American Bar Foundation, Chicago, Illinois, 1978.
- Rhodes, William M. Plea Bargaining: Who Gains? Who Loses? Institute for Law and Social Research, Washington, D.C., December 1978.
- Ruff, Charles F.C. Report of United States Attorney for the District of Columbia October 1, 1978 - December 31, 1980. Office of the U.S. Attorney for the District of Columbia, Washington, D.C. Undated.
- Shortall, John. An Overview of Recent Proposals Regarding the Provision of Indigent Criminal Defense Services in the District of Columbia. The American University Law Institute, Washington, D.C., May 1979.
- Silbert, Earl J. Report of the United States Attorney for the District of Columbia: Fiscal Year 1977, Also Fiscal Year 1978. Office of the United States Attorney, District of Columbia, Washington, D.C., February 1978 and April 1979.
- Spears, Adrian A. and Stanley E. Crawford, Jr. "Omnibus Proceedings in Federal Court," Federal Rules Decisions Vol. 80, pp. 353-99.
- Superior Court of the District of Columbia. Monthly Statistical Reports, Criminal Division. Statistical Branch, D.C. Superior Court, Washington, D.C., 1978, 1979, 1980.

Appendix B

- 78 -

- Ugast, Fred B., Associate Judge, Superior Court of the District of Columbia. Report on the Court Delay Reduction Project. Speech to the D.C. Judicial Conference, Washington, D.C. June 11 and 12, 1981.
- U.S. General Accounting Office. Statistical Results of the Bail Project in Eight Federal District Courts. U.S. General Accounting Office, Washington, D.C., November 1, 1978.
- U.S. House of Representatives, Committee on the District of Columbia. New Basic Criminal Code for the District of Columbia: District of Columbia Law Revision Commission Recommendations. U.S. Government Printing Office, Washington, D.C., 1978.
- U.S. Department of Justice, Executive Office for United States Attorneys. Statistical Report: United States Attorney's Office: Fiscal Year 1980. Justice Management Division, U.S. Department of Justice, Washington, D.C., 1981.
- U.S. President's Commission on Crime in the District of Columbia. Report of the President's Commission on Crime in the District of Columbia, Government Printing Office, Washington, D.C., December 1966.
- Vera Institute of Justice. Felony Arrests: Their Prosecution and Disposition in New York City's Courts. The Vera Institute of Justice, New York, New York, 1977.
- Whittier College School of Law. Descriptive Report of the District of Columbia Superior Court Caseflow. Working Papers. Washington, D.C., October 1979. Unpublished.
- Williams, Kristen M. The Prosecution of Sexual Assaults. Institute for Law and Social Research, Washington, D.C., December 1978.
- Wish, Eric D., Kandace Klump, et al. An Analysis of Drugs and Crime Among Arrestees in the District of Columbia: Executive Summary. Inslaw, Washington, D.C., December 1980.

COMMITTEE REPORT

FAMILY COURT REPORT
OF THE D.C. COURT SYSTEM
STUDY COMMITTEE
OF THE
DISTRICT OF COLUMBIA BAR

Charles A. Horsky
Chairman

Samuel F. Harahan
Staff Director

July 29, 1981

Table of Contents

Family Court Report

	<u>Page</u>
Introduction	1
Section I Summary Comparision of the Domestic Relations Branch, Court of General Sessions and the Family Division of the D.C. Superior Court	3
Section II Domestic Relations	15
A. Summary Comparies of Domestic cases by Major Types, and Court Workload Information	16
1. Divorce Cases	16
2. Paternity and Support Cases	18
B. Family Division Motions Court	22
1. Short and Long Motions	22
2. Motions for Temporary Support	29
3. <u>Pendente Lite</u> Guidelines	31
4. Motions for Temporary Custody, Appointment of Counsel for Children, Social Studies	39
C. Contested Divorce Trials	43
D. Enforcement of Support Orders	50
E. Appointment of Counsel	64
1. Procedures for Appointing Counsel	68
2. Duties, Qualifications and Competence of Appointed Counsel	69
3. Appointed Counsel Payment Levels	71

	<u>Page</u>
4. Appointment of Counsel Paper-Flow	72
5. Assisting <u>Pro Se</u> Litigants with the Necessity of Counsel Decision	75
6. Form Pleadings	76
F. Calendar Control	76
G. Family Division Judiciary	80
H. Information and Referral Services	84
Section III Adoptions	85
A. Court Oversight of Private Adoptions	87
B. Appointment of Counsel	88
C. Improving Timing and Procedures Regarding Interlocutory Decrees	90
D. Re-Activating the D.C. Government Committee on Regulations	93
E. Vital Records Office	94
F. Birthfather Rights in Adoption Proceedings	96
Section IV Intra-Family Proceedings	96
A. The Citizen's Complaint Center	97
B. The Office of the United States Attorney	103
C. Backlog and Service Problems in the Office of the Corporation Counsel	112
D. Court Scheduling	116
E. Intra-Family Offense Statutory Reform	120
Appendix A- Persons Interviewed	123
Appendix B- Bibliography	129
Appendix C- Sample Child and Spousal Support Guidelines	132
Appendix D- Sample Form Pleadings	133

FAMILY COURT REPORT RECOMMENDATIONS

	<u>Page</u>
1. <u>Recommendation: The Court Study Committee recommends that the Family Division Domestic Relations Hearing Commissioner be empowered to act on certain routine motions. The committee believes that criteria can be developed through the rules process to guide the hearing commissioner in areas such as counsel appointment, discovery and others.</u>	27
2. <u>Recommendation: The Court Study Committee recommends that the Superior Court Family Division leadership work with the family law bar and others as appropriate to revamp the motions court process.</u>	28
3. <u>Recommendation: The Court Study Committee recommends that three full time judges be assigned to the Family Division to handle the contested domestic relations trial calendar. This increase in judicial strength from the present two judges in this area should be used also to give priority to pendente lite relief matters certified to that calendar.</u>	29
4. <u>Recommendations: The Court Study Committee recommends the Superior Court Family Division Administrative Judge appoint a broadly based Advisory Committee to assist in formulating proposed pendente lite support guidelines.</u>	34
5. <u>Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations Rules and Benchbook be amended to include pendente lite support guidelines. Such interim support guidelines should in no way fetter the discretion of the Court with respect to final support awards.</u>	34
6. <u>Recommendation: The Court Study Committee recommends that a motion for temporary support be decided by the Court on the basis of affidavits, sworn financial statements and pay stubs or employers' statements filed by each party.</u>	35

- | | | <u>Page</u> |
|-----|---|-------------|
| 7. | <u>Recommendation: The Court Study Committee recommends that motions for temporary support be decided by the Court within fourteen calendar days from the date the motion is filed provided service of process on the other party is obtained at least seven calendar days prior to the proposed court action. To oppose the motion the party served must serve his/her affidavit, financial statement and pay stub or employer's statement on the moving party on his/her counsel at least two days prior to the proposed date for court action.</u> | 36 |
| 8. | <u>Recommendation: The Court Study Committee recommends that Court determination on pendente lite support matters be made by a Hearing Commissioner on the basis of motion and opposition, affidavits, financial statements and other required documentation.</u> | 36 |
| 9. | <u>The Committee further recommends that a form request for production of documents be included with the form motion for temporary support and opposition to motion for temporary support, and that the Rules be modified to require the Court to impose sanction or find contempt of court when fraudulent misrepresentations are discovered in the financial statements.</u> | 36 |
| 10. | <u>Recommendation: The Court Study Committee recommends that a hearing before a judge on pendente lite support be granted when exceptional circumstances warrant a decision outside the guidelines or when later discovered documentation or evidence raises a substantial question about the veracity of written financial statements presented to the Court.</u> | 36 |
| 11. | <u>Recommendation: The Court Study Committee recommends that the Clerk of the Court be precluded from dismissing a case under Rule 41 when a pendente lite order has already been entered, and that the current rule compelling the defendant to file a responsive pleading within the time allotted be enforced.</u> | 37 |

12. Recommendation: The Court Study Committee recommends that in instances where the defendant seeks a continuance before the temporary support matter is considered by the Court, such continuance should, if granted, be approved upon the condition that support payments, at such level as provided in Court promulgated pendente lite guidelines be paid into the Court Registry in an escrow account, as of the date of the request of the continuance. 38
13. Recommendation: The Court Study Committee recommends that the Family Division Domestic Relations Rules be amended to clearly state that all orders for support or modification of support shall be made retroactive to the time of filing the motion requesting such support, unless there is good cause for not making them retroactive. This procedure is possible under current law but is known to few lawyers and judges, or used by relatively few lawyers and judges. 39
14. Recommendation: The Court Study Committee recommends that orders for pendente lite custody be issued within 30 days of the day the opposing party is served with the motion for temporary custody. Court Rules should be changed to reflect this time limit. 41
15. Recommendation: The Court Study Committee recommends that in contested motions for temporary custody mediation by a trained professional mediator be made available at court expense, and specifically offered to the parties by the court. 41
16. Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations rules be amended to require the Court to make an affirmative finding in every case in which custody is contested, as to whether counsel is needed for the child or children. Procedurally, this court decision should be made well in advance of the trial date, either at the time of the hearing on the motion for custody -- when such motion has been filed -- or by court review of the case file or through a status hearing in contested cases. The Family Division Bench Book should include material and discussion in this important area. 42

17. Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations rules be amended to allow the Court or counsel for the child(ren) in contested custody matters to request a social study to be performed by the Court Social Services Division or by a private agency under Court contract. 42
18. Recommendation: The Court Study Committee recommends that the Administrative Judge of the Family Division meet with appropriate bar groups to review the operation of the on-call calendaring procedures, to insure it is still being used as intended, and to assure that sanctions be imposed when appropriate on attorneys who fail to meet the intent of the procedures. 46
19. Recommendation: The Court Study Committee recommends that the Superior Court experiment with the use of an individual calendar system for certain complex domestic relations cases, assigning individual cases to a single judge for all Court proceedings in the case. Appropriate bar groups should assist the Court in devising criteria and procedures for selecting cases to be placed on such a calendar. A Domestic I - Domestic II system could resemble the present system used in the Civil Division. 48
20. Recommendation: The Court Study Committee recommends that an additional full-time judge be assigned to the domestic relation contested calendar, and in the meantime the daily calendar should be reduced to more nearly approximate the daily capacity of the court. 48
21. Recommendation: The Court Study Committee recommends that in every case in which custody is contested mediation by a trained professional mediator be made available at court expense and specifically offered to the parties unless there was an earlier mediation effort at the time of a motion for temporary custody. Mediation sessions should be held as far ahead of the projected trial date as possible. 49

- | | | |
|-----|--|------|
| | | Page |
| 22. | <u>Recommendation: The Court Study Committee recommends that the D. C. Code be amended to allow the Court to order by agreement of the parties joint or alternate custody when the Court finds that it is in the best interests of the child, and that there is reason to believe the parents can succeed in such a custody arrangement.</u> | 50 |
| 23. | <u>Recommendation: The Court Study Committee recommends that the Family Division send to all parties ordered to pay child support or alimony through the Court Registry a certified copy of the court order and a letter or card with directions on where and how to make payments.</u> | 53 |
| 24. | <u>Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a policy of enforcing support orders on a sua sponte basis when the Court is aware that the existing Superior Court order is not being complied with. The Court could implement this process by employing the present computer system of the Family Finance Office to: (a) send out notices promptly to the recipient's attorney when a support payment has been missed; (b) send notices to the support recipient that support payments have not been received by the Court, and describe the remedies available, i.e., attachment, contempt, and Uniform Reciprocal Enforcement of Support Act procedures; and (c) send an overdue notice to the party subject to the Court order informing him/her that the payment has not been received in the Court Registry and that a show cause order may be issued as to why he/she should not be held in contempt. If the payment is not received, the judge who originally issued the order should issue an order to show cause and hold a hearing on it, issuing a contempt order if appropriate.</u> | 56 |

- | | | <u>Page</u> |
|-----|---|-------------|
| 25. | <u>Recommendation: The Court Study Committee recommends that appropriate bar groups prepare, as a public service, informational material for use by the lay public on the steps involved to enforce support orders or to obtain modification of support awards in the District of Columbia. The materials should briefly describe wage attachment and other methods for pursuing support payments. Copies of these informational flyers should be available for distribution at the Family Division Clerk's Office.</u> | 57 |
| 26. | <u>Recommendation: The Court Study Committee recommends that Section 16:912 of the D. C. Code be amended to clearly allow the Court, at the time of the divorce decree, to order a wage assignment to meet child and spousal support obligations prospectively. Currently the D.C. Code only provides the wage assignment procedure when arrearages have accrued.</u> | 58 |
| 27. | <u>Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge, in conjunction with others, develop form support orders.</u> | 59 |
| 28. | <u>Recommendation: The Court Study Committee recommends that the D. C. Code be amended to more clearly provide that the parties may elect among alternative approaches as to the inclusion or exclusion of the separation agreement into the final court order for divorce. Among the choices the parties should have is that the separation agreement be: (a) incorporated in the court order; (b) ratified and affirmed by the court but not incorporated in the court order; and (c) incorporated but not merged in the court order. The statute should provide that if option (c) is chosen, the support-paying party will be able to move to reduce the amount of the court-ordered support while leaving the balance as a contractual obligation only, not subject to enforcement by contempt of court.</u> | 60 |

29. Recommendation: The Court Study Committee recommends that the D.C. Code be changed to allow either party at the parentage hearing to require both parties and the child or children to submit to a properly conducted blood test, and that the results of said tests be allowed to be admitted into evidence by either party so requesting in accordance with the normal rules of evidence. 62
30. Recommendation: The Court Study Committee recommends that steps be taken to provide HLA tests to all relevant parties, and that a procedure be organized that will allow these tests to be performed at a cost to the party requesting them in accordance with his or her ability to pay using accepted in forms pauperis screening procedures. 62
31. Recommendation: The Court Study Committee recommends that the District of Columbia Council enact legislation abolishing the statute of limitations in parentage cases. 63
32. Recommendation: The Court Study Committee favors a continued Superior Court role in all cases involving enforcement of support orders. 64
33. Recommendation: The Court Study Committee recommends that the D.C. Superior Court Family Division Bench promptly implement the intent of the statutory changes in the 1977 District of Columbia Divorce Act that provides for the appointment of disinterested counsel for defendants only in the most extenuating circumstances. 67
34. Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations Rules, and the Family Division Benchbook include criteria as to when an attorney is to be appointed by the the Court to represent defendants in divorce actions. Factors to be considered should include length of the marriage, support and/or custody of minor children, existence of real property, and take into account the statutory intent of the 1977 District of Columbia Divorce Act. 68

- | | | <u>Page</u> |
|-----|--|-------------|
| 35. | <u>Recommendation: The Court Study Committee recommends that the Superior Court Family Division leadership institute procedures to assure that attorneys receiving court appointments in family law cases have relevant knowledge and competence. The Committee would encourage the Court to adopt periodic continuing legal education standards, and/or recent past domestic relations practice experience requirements as minimal criteria for attorneys being permitted to be appointed by the Court to domestic relations cases.</u> | 71 |
| 36. | <u>Recommendation: The Court Study Committee recommends that Superior Court Domestic Relations Rule 17-D-3 be amended to allow appointed counsel in divorce cases up to 45 days to file a responsive pleading.</u> | 71 |
| 37. | <u>Recommendation: The Court Study committee recommends that the family law bar develop and disseminate informational material as to when domestic relation parties should seek advice of counsel in pursuing matters in the Superior Court.</u> | 76 |
| 38. | <u>Recommendation: The Court Study committee recommends that the Superior Court adopt form pleadings in the domestic relations and related areas. The Family Division administrative judge and/or the appropriate rules committee should consider patterning such form pleadings and related forms on the California sample material appended to the report.</u> | 76 |
| 39. | <u>Recommendation: The Court Study Committee recommends that pending an increase in the number of judges in the domestic relations branch, procedures be instituted whereby at the request of the parties, hearing masters would hold preliminary hearings to make findings of fact and recommend disposition in contested domestic relations cases. Costs of such preliminary hearings would be borne by the parties except in informa pauperis cases. Either party can file exceptions to the findings. It is further urged that a committee be promptly appointed by the Superior Court leadership to work out the implementation of such system.</u> | 79 |

40. Recommendation: The Court Study Committee recommends that the Family Division Assignment Office be delegated the authority to grant agreed-upon continuances in contested domestic relations cases. Decisions regarding contested continuances and trial date advances should continue to be made by a judge. 80
41. Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court reevaluate the necessity for the Family Division Calendar Control Judge position. (The Court Study Committee has recommended in the Juvenile Delinquency and Child Neglect Report an extensive plan to dispose of cases far more expeditiously than is presently done. Were the Council of the District of Columbia and the Superior Court to adopt the major thrust of the Committee's recommendations in that area, it might be necessary to retain the calendar control judge to assure adherence to the speedy trial and case monitoring provisions.) 80
42. Recommendation: The Court Study Committee recommends that the Chief Judge continue judicial assignments to the Family Division at a minimum of three months, and consider lengthening them to one year or more. The Committee also recommends somewhat longer rotations in particular assignments. The Committee also supports allowing the Administrative Judge of the Family Division to make assignments within the Division. 81
43. Recommendation: The Court Study Committee recommends that the Family Division prepare a thorough benchbook geared to each judicial assignment within the Family Division and provide for its regular updating. The Court should employ an outside consultant for this undertaking or assign professional staff to the task, with consultation, assistance, and advice from bar groups. 83

44. Recommendation: The Court Study Committee recommends that the Superior Court Board of Judges adopt a policy that each Division offer specific training to judges newly assigned to the Division and periodically throughout the judge's assignment to that Division. Staff and resources should be allocated to the orientation and training function of the Superior Court. Videotaped materials should be developed and equipment purchased to permit their utilization for new judges and judges newly rotated into a division. 83
45. Recommendation: The Court Study Committee recommends that an office be organized to provide daily advice and referral service for people summoned to court on the support, parentage and intrafamily calendars of the domestic relations branch of the D. C. Superior Court. The office would be similar to one in the Landlord-Tenant Branch of the District of Columbia Superior Court Civil Division. 85
46. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adoption rules be amended so as to provide for an independent home study and report cases where a licensed child-placing agency or the Department of Human Services is not involved. Should the Court waive the order of reference - independent home study requirement the - Committee believes that the Court rules should require that an affidavit be submitted stating in detail how contact was made between the prospective adoptive parents and parties representing the adoptee. If the filing appears irregular in any way the adoption clerk should refer the matter with appropriate recommendations to the judge-in-chambers for action. 88
47. Recommendation: The Court Study Committee recommends that the Family Division Rules or Benchbook include criteria to guide the Court in deciding whether to appoint counsel for the adoptive child in judicial proceedings relating to the adoption decision with reference to Court proceedings involving the adoptive child. Criteria such as those set forth in the text of the Report should be considered. 89

	<u>Page</u>
48. <u>Recommendation: The Court Study Committee recommends that the Superior Court leadership and/or the District of Columbia Council explore means whereby counsel appointed by the Court in adoption proceedings might be compensated.</u>	90
49. <u>Recommendation: The Court Study Committee recommends that the Family Division Clerk review the internal court procedures leading to the issuance of the interlocutory adoption decree with the objective of reducing the period between the receipt of the investigation report and Court action. If for workload or other reasons the time period cannot be shortened, notice should be sent to the parties by the adoption clerk explaining what the customary processing time is in such cases.</u>	91
50. <u>Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge initiate a Divisional procedure whereby adoptive parents may appear upon request before the bench or in-chambers to witness the Court's approval of an adoption decree.</u>	92
51. <u>Recommendation: The Court Study Committee recommends that Interlocutory Adoption Decrees not extend beyond six months unless there the Court finds there is a specific reason in an individual case.</u>	93
52. <u>Recommendation: The Court Study Committee recommends that the Mayor of the District of Columbia promptly reactivate the Committee on Regulations or other similar appropriate forum, and that such group concern itself with revising and reissuing the earlier Manual on Adoptions promptly.</u>	93
53. <u>Recommendation: The Court Study Committee recommends that the Director of the Department of Human Services promptly undertake the licensing process for each child-placing agency operating in the District of Columbia and institute procedures to keep such licenses current.</u>	94

		<u>Page</u>
54.	<u>Recommendation: The Court Study Committee recommends that the District of Columbia Vital Record certificate processing standards be modified so that affected parties will not be forced to wait more than 30 days before receiving birth certificates. The appropriate division of the D.C. Bar should consider bringing this matter to the attention of the Mayor, and/or the D.C. Council so that budgetary relief or other necessary assistance may be provided if warranted to the Vital Records Office.</u>	94
55.	<u>Recommendation: The Court Study Committee recommends that the appropriate division of the D.C. Bar consider the need for amended statutory language in the birthfather rights and notice area of of adoption proceedings.</u>	95
56.	<u>Recommendation: The Court Study Committee recommends that the Citizen's Complaint Center continue to function as an intake and referral agency in cases of intra-family violence. The Committee commends the leadership of the D.C. Courts, the Office of the Corporation Counsel, and the Office of the U.S. Attorney for their active support and use of the Complaint Center.</u>	100
57.	<u>Recommendation: The Court Study Committee recommends that the D. C. Code be amended to provide that responsibility for both criminal and civil prosecution of intra-family offenses be consolidated in one prosecutorial entity. The Citizen's Complaint Center should continue to be coordinated by a "neutral" organization not a part of the U.S. Attorney's Office, the Office of the Corporation Counsel, or the Superior Court Social Service Division.</u>	101
58.	<u>Recommendation: The Court Study Committee recommends that the mediation service of the Citizen's Complaint Center be retained and expanded as required to meet the demand for service.</u>	106

- | | | <u>Page</u> |
|-----|--|-------------|
| 59. | <u>Recommendation: The Court Study Committee recommends that the United States Attorney's Office develop and maintain statistics on the disposition of cases referred for prosecution by the Citizen's Complaint Center. Statistics on the disposition of cases of intra-family violence (including lovers and ex-spouses) which come directly through the U.S. Attorney's Office papering desk rather than the Citizen's Complaint Center should also be developed and maintained.</u> | 106 |
| 60. | <u>Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office extend their existing victim-witness assistance capability to those complainants whose intra-family cases are referred to the U.S. Attorney for papering. This function should include the following: maintaining contact with the victim, referring the victim to the Citizen's Complaint Center if the case "washes out" or if further referrals are needed; and advising the Assistant U.S. Attorney handling the case of the need for special protective orders.</u> | 107 |
| 61. | <u>Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office cease using its scarce resources for informal "probable cause" hearings by Assistant U.S. Attorneys and paralegals at the Citizen's Complaint Center. A warning letter should be sent to the alleged abuser if the victim wishes, and she should be offered mediation services and civil protection orders as needed.</u> | 107 |
| 62. | <u>Recommendation: The Court Study Committee recommends that all initial decision to decline prosecution of intra-family cases be subject to review at a supervisory level in the U.S. Attorney's Office.</u> | 107 |
| 63. | <u>Recommendation: The Court Study Committee recommends that the U.S. Attorney and the Corporation Counsel continue to station an attorney at the Citizens Complaint Center full time.</u> | 107 |

- | | | <u>Page</u> |
|-----|--|-------------|
| 64. | <u>Recommendation: The Court Study Committee recommends that the Corporation Counsel seek temporary protection orders in all cases in which the victim requests one and the statutory standards are met. Such action should be taken even if, in the opinion of the Corporation Counsel's Office, criminal prosecution would be more suitable. Additional staff should be hired by the Corporation Counsel's Office to make this undertaking possible if that is required.</u> | 111 |
| 65. | <u>Recommendation: The Court Study Committee recommends that the Clerk of the D.C. Superior Court work with the Office of the Corporation Counsel to improve the scheduling procedures in the Judge-in-Chambers Office for considering intra-family offense temporary protection orders.</u> | 111 |
| 66. | <u>Recommendation: The Court Study Committee recommends that the Superior Court Family Division Administrative Judge, in consultation with the Corporation Counsel, the Center for Community Justice, the family law bar, and others, study the feasibility of having temporary protection orders issued by a Family Division Hearing Commissioner. If it is determined that this change would be desirable, appropriate changes and legislative authorization should be sought if required.</u> | 111 |
| 67. | <u>Recommendation: The Court Study Committee recommends that the Corporation Counsel seek civil protection orders in each case in which the victim of abuse wants a civil protection order and the statutory standards for a civil protection order are met. The D. C. Council should authorize additional support staff for the Special Litigation Unit of the Office of the Corporation Counsel to include, at a minimum, one additional secretary.</u> | 114 |

The Court Study Committee further recommends that the Corporation Counsel set processing goals in C.P.O. cases to include having petitions filed with the Court within 24 hours of the time the complainant comes to the Citizen's Complaint Center.

- | | | <u>Page</u> |
|-----|---|-------------|
| 68. | <u>Recommendation: The Court Study Committee recommends that sufficient funds be appropriated for the Corporation Counsel to hire a special process server for the sole purpose of service of process in civil protection and hearings. It is also recommended that complainants be urged to furnish the Office of Corporation Counsel full information, including both home and work addresses of the respondent, and telephone numbers of the complainant for use by the U.S. Marshal in effecting service of process. In addition to formal service or attempted service and mailing a copy of each summons, the Corporation Counsel should telephone the respondents and notify them to appear for the hearing.</u> | 116 |
| 69. | <u>Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel develop a procedure whereby all cases returned to files on the day of the scheduled CPO hearing are followed up, particularly those with defective service.</u> | 116 |
| 70. | <u>Recommendation: The Court Study Committee recommends that the civil protection motions court calendar not be limited to 30 cases on any Friday. Cases should be placed immediately on the calendar, leaving only sufficient time for service. Once service of process difficulties are corrected, the Court should schedule civil protection order cases for hearing motions within ten work days of the date of filing.</u> | 117 |
| 71. | <u>Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel assist in preparing and making readily available a booklet for petitioners and a booklet for defendants explaining what the civil protection order is, what it requires the defendants to do and how the petitioners may have it enforced if it is violated. The booklet should be in both English and Spanish.</u> | 118 |
| 72. | <u>Recommendation: The Court Study Committee recommends that the form of the Civil Protection Orders be rewritten in understandable prose and that it include a statement that "if there is a violation of this order, return to the Citizen's Complaint Center."</u> | 118 |

- | | | <u>Page</u> |
|-----|---|-------------|
| 73. | <p><u>Recommendation: The Court Study Committee recommends that a Benchbook be developed for use of Family Division judges which provides in intra-family cases that:</u></p> <ul style="list-style-type: none"> - <u>all defendants sit on one side of the courtroom and all plaintiffs on the other;</u> - <u>at the beginning of the court session the daily courtroom procedures be explained to those assembled in the courtroom;</u> - <u>the seriousness of the alleged offense be explained to the defendants;</u> - <u>at the conclusion of the hearing the bailiff be instructed to immediately give a copy of the judge's order to the plaintiff and the defendant along with an explanation of what the order means;</u> - <u>both plaintiff and defendant be given, before leaving the courtroom, a booklet describing procedures to follow in the event of a violation of the order, as well as outlining the consequences to parties in violation of the order;</u> - <u>the defendant be required to remain in the courtroom for a sufficient length of time to allow the petitioner to leave the courthouse.</u> | 119 |
| 74. | <p><u>Recommendation: The Court Study Committee recommends that training be made available to Superior Court Family Division judges several times a year on family violence and on their legal authority in these cases. Professional resources such as psychologists should be on call if the judge has questions on family violence or other issues in the intra-family area during the course of his or her term in the Family Division.</u></p> | 120 |
| 75. | <p><u>Recommendation: The Court Study Committee recommends that the D.C. Council substantively amend the Intra-Family Offense provisions of the 1970 D.C. Court Reform Act taking into serious consideration the proposals of the Women's Legal Defense Fund and other community groups.</u></p> | 122 |

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the family court area. The purpose of the Court Study Committee has been to assess the impact of the 1970 D.C. Court Reform and Criminal Procedures Act, and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. Court System leadership, and to the community. The D.C. Court System Study Committee, chaired by Charles A. Horsky, Esq., is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, Esq. the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

In examining the operation of the Family Division of the D.C. Superior Court, the Court Study Committee developed two separate reports. One report covered court activities relating to juvenile delinquency, persons-in-need-of-supervision, and procedures involving abused and neglected children, and was issued by the Committee in December, 1980. The second report, which follows, examines the domestic relations, adoption, and intra-family areas. The Committee lacked the resources to analyze the mental health area in adequate depth to offer findings and recommendations. However, our initial review in that area suggests there are a number of important issues which should be studied by an appropriate group at some

- 2 -

early opportunity. With regard to the judge-in-chambers area the Committee's recommendations may be found within the discussion of the substantive areas of this report.

The Family Court Subcommittee was responsible for the principal investigative and analytical work leading to the findings and recommendations set forth in the report. Subcommittee members Diane Dodson, Rolland Lamensdorf, Mark Merson and Sally Katzen, Chair were assisted in the report drafting by Joe Kaiser, court systems specialist, Violet M. Gunther, editor, and Samuel F. Harahan, staff director of the Committee. Additionally Bernice Just and Sharon Shanoff served on the Subcommittee but they had to withdraw after a time due to other commitments. The Family Court Subcommittee was also assisted by a number of law students who conducted research and special analyses in selected areas. The Committee is appreciative of the volunteer assistance of Linda Peyton and Phil Dropkin of the Antioch School of Law Women's Rights Clinic, William Voharas of the George Washington University Law School, and Joseph Smith, M.D. of the American University Law School. Additionally Elizabeth Curtz, Esq. assisted the Subcommittee with its analysis of the child support area. The Committee also is appreciative of the assistance received through the L.E.A.A. program as provided by the American University Law Institute's Criminal Courts Technical Assistance Project in studying the on-call area of calendaring domestic relations cases.

- 3 -

In undertaking the development of the report the Family Court Subcommittee conducted interviews of practicing attorneys, judges, and supporting court personnel. Additionally the Committee consulted available literature including advisory guidelines and national standards, and undertook several brief questionnaire and statistical studies in areas of support payment, on-call calendaring, and mental health representation. The Committee was aided greatly by ongoing access to Court files and data, furnished through the Superior Court Family Division Clerk's office at the direction of Chief Judge H. Carl Moultrie, I. This assistance materially facilitated the Committee's work and we are most appreciative of Chief Judge Moultrie for his continuing support of our efforts.

The report which follows is divided into four sections, the first of which compares aspects of the former Court of General Sessions Domestic Relations Branch and the former Juvenile Court with like units within the present 1970 D.C. Court Reform Act created D.C. Superior Court. The three remaining sections examine the domestic relations, adoption, and intra-family areas of the existing Superior Court. As noted above, findings and recommendations are offered where appropriate.

SECTION I SUMMARY COMPARSION of the DOMESTIC RELATIONS
BRANCH, COURT of GENERAL SESSIONS and the
FAMILY DIVISION of the D.C. SUPERIOR COURT

This section of the Family Court Report of the Court Study Committee describes and compares the domestic relations

jurisdiction, workload, and judicial resources before and after the implementation of the 1970 D.C. Court Reform Act. The quantitative aspect of the comparative analysis which follows is somewhat lacking due to the absence of like statistics (and jurisdiction) for the former Court of General Sessions and the present Superior Court of the District of Columbia.

The Domestic Relations Branch of the Court of General Sessions was created as a separate division of the Court in 1956. Three judges were appointed to this Branch. Judges sitting in this Branch did not rotate to other divisions of the court, thus they heard only domestic relations matters. Between 1956 and 1968, the caseload of the Domestic Relations Branch continually increased while judicial and staff levels did not. When the 1968-1970 court management study was undertaken by the Ellison Committee, the Domestic Relations Branch had exclusive jurisdiction over divorce, annulment, and legal separations, heard actions for maintenance and support, and handled matters relating to custody.¹ Some changes in the jurisdiction of the Domestic Relations Branch were made in the 1956-1968 period, but no additional judges were assigned to

¹ Committee on the Administration of Justice of the Judicial Council. Report of the Court Management Study Submitted to the D.C. Courts and Related Agencies. Committee on the District of Columbia, United States Senate, May 1970. (Hereafter called Ellison Committee Report.) Committee working papers. (Much of the discussion of this part of the report is based on the Ellison Committee files.)

- 5 -

handle the increasing caseload. According to then Chief Judge Harold Greene's estimations in his 1967 Court of General Sessions Annual Report, the Domestic Relations Branch could not handle its existing caseload adequately, and the anticipated addition of adult paternity jurisdiction to that Branch threatened to increase significantly the severity of the case backlog.

As of September 1968, over 5,800 cases were pending in the Domestic Relations Branch of which 4400 were divorce, annulment, support and custody cases. In addition, approximately 700 adoption cases, 1000 Reciprocal Support cases, and 18 Habeus Corpus cases were also pending on that date. This backlog was seen partly as a function of the failure to add any judges to the three that were sitting in the Domestic Relations Branch during this entire period.

Domestic relations related judicial staffing and caseload levels for the Superior Court Family Division in the late 1970's compare very closely with the data cited above for the Court of General Sessions, Domestic Relations Branch. Divorce case filings totaled 4,077 in 1980 as compared with 4,309 in 1974.² Pending divorce caseload shows 4,426 cases as of January 1, 1980, as compared with 4,400 divorce case pending as of September, 1968. With the clear exceptions of paternity case filings and reciprocal support filings, the

² District of Columbia Courts. 1980 Annual Report, District of Columbia Courts. D.C. Government. Washington, D.C. June, 1981 P. 65.

- 6 -

overall domestic relations caseload has not substantially changed in the period since the enactment of the 1970 D.C. Court Reform Act. Judicial deployment to the Family Division of the Superior Court has averaged seven active judges for most years since the Court was created in 1971. Of this number it appears that full-time equivalent domestic relations judicial staffing has been slightly more than three judges. (Precise estimates are difficult to discern as certain Family Division judicial assignments such as Motions judge may involve both juvenile delinquency cases & child neglect matters as well as domestic relations cases.)

The area of greatest difference in comparing the domestic relations function in the local District of Columbia Trial Court before and after the 1970 Act concerns jurisdictional changes. The introduction of new domestic relations jurisdiction in the form of the intra-family proceeding, the elimination of criminal proceedings for support actions related to child-born-out-of-wedlock cases, and other changes substantially increased the jurisdictional areas domestic relations judges handle in the family Division of the Superior Court when compared with the counterpart unit in the Court of General Sessions.

It is also useful to compare the average time to disposition for domestic relations cases handled by the Court of General Sessions with that of the Superior Court Family Division. Divorce cases are a good indication once they have

- 7 -

comprised the bulk of the domestic relations workload for both courts. In the 1966-68 period, it took between 180 and 210 days from joinder to disposition for a divorce case, and an uncontested divorce took 42 to 56 days. Over ten years later, the median times from joinder to disposition were 199 days for contested divorces and 61 days for uncontested matters.³ These data indicate almost identical average disposition times for the Court of General Sessions Domestic Relations Branch and the Superior Court Family Division with regard to contested and uncontested divorce cases.

Thus, The efficiency of the D.C. Superior Court measured in terms of processing time required to dispose of domestic relations cases has not improved demonstrably as a result of the implementation of the 1970 D.C. Court Reform Act. This general finding does not mean that the 1970 Act wasn't beneficial in the family law area, but rather that on the issue of the time required to dispose of major domestic relations cases the two Courts - General Sessions and Superior Court - are very similar.

³ District of Columbia Court Delay Reduction Project, Whittier College School of Law, 1979-80, interim descriptive reports referred to throughout as Whittier Study.

It should be noted that the data report reflects only from the time the case is joined and not from the earlier date when the case is initially filed. (The above comparison was selected because comparable date of filing information for the pre-Court reform period was not available.)

- 8 -

In the pre-1970 period, delays were occasioned by various practices of the Domestic Relations Branch. For example, divorce cases that were thought to be complex or time-consuming were generally not placed on the trial calendar but rather administratively "carried", so that they could be more easily scheduled when a sufficient time block became available. Similarly, Court procedures did not allow defaults to be docketed for ex parte hearings, unless an attorney personally appeared and requested such a hearing. Although divorce cases where the defendant defaulted or admitted the claims made did not require a hearing before a judge, they were given one routinely. In cases for support the defendant often did not appear in Court until the last possible day, and then only to request court-appointed counsel; the practice of not appointing counsel in advance led to frequent continuances in situations such as those briefly described above. Pendente lite motions providing "intra-family" type protection were delayed often until the formal trial, due to a Court practice of only considering such Motions when an extremely strong case was made. Pendente lite motions relating to support were not heard until after the final decree was issued by the Court even though this often took upwards of six months. This latter General Sessions Court domestic relations practice was in direct contrast to the U.S. District Court practice in other areas of hearing pendente lite motions expeditiously.

Another limitation of the Domestic Relations Branch of the Court of General Sessions, as noted in the Ellison Committee working papers, was the total absence of court supported para-judicial, or non-judicial, dispute resolution procedures. Generally, there are a substantial number of domestic relations related cases where the parties are not materially contesting the issues in the case, or where the phase of the proceeding is of a temporary or preliminary nature. For example, in the General Sessions Court during the late 1960's about 35% of divorce-related actions were uncontested. While hearing examiners, masters and other procedural devices were being used in other jurisdictions at that time -- notably New York and California -- the Domestic Relations Branch of the Court of General Sessions did not employ para-judicial officers to facilitate the flow of cases through the Court.

One might reasonably expect that the broader jurisdiction of the Superior Court Family Division over the previous Court of General Sessions would result in measurably longer case processing times within the Court. The availability and active use of hearing examiners/masters by the Family Division of the Superior Court in certain types of family law cases may explain, as the data noted earlier indicated, why the average disposition times in domestic relations cases have not increased significantly when compared with the former court. In this

- 10 -

regard the Court Study Committee was most impressed with the diligence and industry of the Domestic Relations Hearing Commissioner, Mort Berg and his staff. The productivity of that Superior Court Family Division office is exemplary and a credit to the Division and the Court. The high volume of cases handled by this unit and the competency with its functions is testimony to the value of the hearing commissioner procedure and suggests the value in further expansion.

Another area requiring mention in the Court of General Sessions Domestic Relations Branch was the enforcement of support orders. Compliance with Court-ordered child or spousal support was minimal. Many factors contributed to this situation including:

- inability to locate defendants,
- plaintiffs' reluctance to proceed against their spouses or lovers,
- confusing and convoluted processes,
- the necessity to retain an attorney,
- general ignorance of existing remedies,
- absence of meaningful incentives for persons receiving Public Assistance payments,
- inability to garnish wages of government employees.

The support order enforcement problem was further exacerbated by the division of jurisdiction over enforcement of support orders between the Juvenile Court and General Sessions Court,

- 11 -

Domestic Relations Branch. Support orders arising out of ordinary divorce actions were handled by the Court of General Sessions. Support orders involving children born-out-of-wedlock (CBOW cases) were decided in the Juvenile Court.

When adult paternity cases (CBOW) were transferred from the Juvenile Court to the Superior Court Family Division it was thought that the greater coordination would increase the level of child support enforcement. However, through the present, the Superior Court Family Division can only demonstrate an aggregate support payment rate of about 25% for cases where payments are made through the Registry of the Court. (The overwhelming majority of support orders require payment through the Court.) In Michigan, in contrast, which has a support order enforcement system generally recognized as exemplary, the enforcement levels reflect a payment range of 45-50% satisfied. The 1970 D.C. Court Reform Act has not contributed to improvement in this area, and further reform is needed. (It should be noted however that considerable new effort is underway in the past few years in both the Executive Branch and Judicial Branches of the District of Columbia Government to improve the rate of spousal and child support order compliance. Impetus for these activities emanates largely from the U.S. Department of Health and Human Services, under the Aid to Families with Dependent Children program (AFDC), and Title IV-D of the Social Security Act as amended.) Later sections of this report identify steps which the Court might take to further improve the support enforcement area.

- 12 -

The 1970 D.C. Court Reform Act did introduce new or improved procedures for handling some types of domestic relations cases. For example, the 1970 Act brought about a new remedy for intra-family assault and abuse cases -- the Civil Protection Order (CPO). Prior to the 1970 Act, citizens wanting to file intra-family assault or domestic disturbance complaints of a misdemeanor variety had to personally visit the Office of the U.S. Attorney, often wait five hours or longer, and then, following a brief hearing, be told to return later for a second hearing before a judge. The Ellison Committee working papers reveal that part of the reluctance of the U.S. Attorney in actively pursuing such cases related to the fact that the defendant - often the husband of the complaint - would have to be given a criminal charge, and that in many cases the complaining witness would decline, before the trial date, to cooperate in prosecuting the case.

The 1970 Act created an intra-family jurisdiction which provided for a civil remedy as distinguished from the earlier criminal sanctions for such cases. Since February 1971, these cases have been brought before the Superior Court Family Division by the Office of the Corporation Counsel, and the Court decides whether or not to issue a civil protection order.

There was general agreement among those interviewed who were familiar with the intra-family statute of preferring the current statutory approach over that in existence before

- 13 -

the 1970 Act was implemented. It was beyond the capability of the Court Study Committee to assess, in-depth, the relative effectiveness of the current statutory procedures for handling intra-family disputes -- i.e. a civil law procedure rather than a criminal law procedure. Additionally, the Committee was unable to locate any independent evaluation of this new statutory approach in the District of Columbia.

Interviews conducted by the Committee revealed serious concern about a number of the more mechanical aspects of the operation of the intra-family statute. For example it was estimated that nearly half of the intra-family cases coming before the Superior Court Family Division are not adjudicated due to failures in the service of process area. A subsequent section of this report addresses certain of the more serious existing problems with the functioning of the intra-family statute and offers recommendations for improvement.

The final general point of comparison between the Court of General Sessions Domestic Relations Branch and the Superior Court Family Division concerns the perception of the Court before and after implementation of the 1970 D.C. Court Reform Act. While the Court Study Committee lacked the resources to address this question conclusively, interviews conducted by the Committee did reveal a consistent belief that there were serious "image" problems on the part of the Court

- 14 -

of General Sessions Domestic Relations Branch. Court Study Committee interviews with attorneys, judges, court staff and others produced statements of a number of the positive advantages accruing to the domestic relation/family law area by having such matters handled under a unified trial court of general jurisdiction. By being a specialized family division within a general jurisdiction trial court, the Superior Court structurally conforms to relevant American Bar Association standards for trial courts. Additionally with the enactment of the 1970 Act, the Family Division has received a broader complement of the Court's overall judicial talent than was possible before court unification. The practice of periodically rotating judges also was mentioned by several interviewees as preferable over the permanent fixed assignment procedure of the Juvenile Court, and in the Court of General Sessions Domestic Relations Branch. Nonetheless while many excellent judges have served in the Superior Court Family Division since 1971, the Division does appear to experience a continued perception in some quarters of being "second class", or less important than other divisions of the Court. The leadership of the D.C. Superior Court since its inception appears to have been particularly sensitive to this matter, and a variety of steps have been taken to upgrade the image of the family law area of the Superior Court. The Court Study Committee commends both former Chief Judge Harold H. Greene, and present Chief Judge H. Carl Moulton I, for this sensitivity.

While the limited comparative data available did not fully support the view, several attorneys interviewed by the Committee stated they believed that all types of cases handled by the Family Division are moving significantly more quickly now than prior to the 1970 D.C. Court Reform Act. Serious concern was voiced however, by several practicing attorneys about the lack of familiarity with the appropriate law and procedure on the part of some judges who have been assigned to the Superior Court Family Division since February 1971. Also criticism was expressed by both judges and attorneys with the practice of monthly rotation of judges throughout the Superior Court used until to 1978. (It should be noted however, that while Court policy during this initial implementation period called for the monthly rotation of judges throughout the Court, there were many instances where judges served in the Family Division for consecutive periods of three months or longer, thus providing a level of continuity for some judges in some cases.)

SECTION II DOMESTIC RELATIONS

Of the subjects covered by the Court Study Committee in the family law area, none has as much impact in terms of case volume, or level of Court funds committed, or numbers of people affected as the domestic relations area. The Committee's coverage of domestic relations law encompasses aspects of contested and uncontested actions for divorce and the

- 16 -

custody of minor children, as well as the Superior Court's handling of various types of support and paternity actions, and adoptions with emphasis in all these areas on underlying Court procedures, practices and policies.

A. Summary Description of Domestic Relations Cases by Major Types, and Court Workload Information

1. Divorce Cases

The largest single workload category within the domestic relations area of the Superior Court Family Division are divorce cases. Since the passage of the 1970 D.C. Court Reform Act annual Superior Court divorce case filings have averaged about 4,200 cases with little increase over the period (4,062 filings in 1972, 4,166 filings in 1979). While so-called divorce cases may be of several different types, such as actions to annul a marriage, or seeking custody of a minor child, an estimated 95 percent are actions for divorce.*

Procedurally, divorce cases are handled differently by the Superior Court according to whether the cases are contested or uncontested. Of the 4,200 annual divorce case filings, approximately 1,000 are contested, meaning the parties have not settled all collateral issues before filing the case with the Court - i.e., property rights, child custody, support payments, and other issues. (Some of these cases resolve remaining areas of disagreement after the date of filing and

* Whitter op. cit. (Family Division, p. 2.)

- 17 -

the case is then processed by the Court as uncontested.) 2,700 of the remaining annual divorce filings are uncontested cases, and the balance of 500 cases are dismissed prior to adjudication for failure to prosecute, or to bring the case to issue, within 6 months of filing pursuant to Superior Court Domestic Relations Rule 41-F.⁵

The time to disposition for divorce cases in the Superior Court Family Division is very closely linked to the capacity and resources of the Court to dispose of it's case-load. Contested divorce cases are tried before a judge and take an average of ten months from filing to disposition, with two thirds of this time coming after the cases are at issue - the phase of the proceeding over which the Court theoretically has the most control.⁶ (Attorneys interviewed by the Committee observed that the time to disposition for a complicated contested divorce case may take up to 18 months or longer. Other attorneys noted that lengthy delay in disposing of contested domestic relations cases is almost always attributable to either the attorneys or the parties, and not to the Court, though it should be observed that historically the Court has not played a very active role in encouraging the early disposition of cases.)

⁵ Ibid., p. 11.

⁶ Ibid., p. 13.

- 18 -

Divorce cases on the uncontested calendar are brought before a hearing commissioner for disposition. According to data generated by the Whittier Study the average time from filing to court disposition in uncontested divorce cases is 176 days with 61 days of this time coming after the issues are joined.

2. Paternity and Support Cases

Paternity cases considered by the D.C. Superior Court are almost always linked to a collateral claim for child support. Depending on the determination made by the judge with reference to the parentage of the child, the Court then considers the level of monetary support to be paid for the maintenance of any minor children. Because child support cases and paternity cases involving local residents of the District of Columbia are so closely interrelated and are handled procedurally alike by the Court they will be discussed together in this brief description.

Since the passage of the 1970 D.C. Court Reform Act up until 1979, case filings in local support and paternity actions have not fluctuated markedly. Combined local support and paternity case filings averaged about 800 cases each year - 857 combined filings in 1972, and 787 filings in 1978.⁷ This stable case filing trend however, appears to have ended. Data for 1979 reveal that paternity cases alone increased 107

⁷ D.C. Courts, Annual Report, 1978, p. 72.

- 19 -

percent over 1978 from 532 cases filed in 1978 to 1,104 paternity filings in 1979. Local support actions in 1979 as well increased 42 percent over the 1978 level.^{*}

Data indicate that the overwhelming majority, (85%) of all types of support and paternity cases are actions involving petitioners receiving some form of public assistance, so-called "4-D" cases. (Title 4-D of the Social Security Act as amended authorizes federal financial support to states which set up procedures to determine and/or enforce the child support payment obligations of parents not presently paying such support.) In the District of Columbia these cases are brought to the Superior Court through the initiative of the D.C. Department of Human Services and the Office of the Corporation Counsel. The projected growth in Court filings in these areas in 1980, and beyond, is directly attributable to both the increased priority and financial resources being applied to this area by the federal government over the past several years, and to a recent litigation advocating the extension of the statute of limitations on bringing paternity actions. Also legislative enactments in recent years have enabled support enforcement actions to be brought more easily against government employees at the District and Federal levels.

^{*} D.C. Courts, Annual Report, 1979, p. 66.

- 20 -

As noted above, both paternity and support actions ultimately involve the core issue of support. Within the support category are several different types of cases identified in terms of the residence of one or both of the parties in the court suit. Thus, in local support cases both parties reside in the District of Columbia, and in reciprocal support cases, one or the other party resides outside the District. In some reciprocal support cases - i.e., respondent cases - the Superior Court is being requested to establish the ability of the non-custodial spouse who lives in the District to provide the level of support awarded by a court in another state to the custodial spouse who lives outside the District of Columbia. Once this determination of support capacity is made, steps can be taken to enforce the judgment of the Court against the non-custodial spouse.

Procedurally, the majority of both major kinds of support cases are handled in a similar manner by the Superior Court. Most cases are filed by the Office of the Corporation Counsel in the name of a person receiving some form of ongoing public assistance. The Corporation Counsel is acting on behalf of the District Government in these matters. The District Government, which is paying the public assistance for the wife and/or children in the first instance, will receive the proceeds from successful Court enforcement actions. Once support or paternity cases are filed with the Superior Court a hearing is scheduled before a judge. The vast majority of

- 21 -

these cases are disposed of by agreement. Respondents in such cases rarely retain an attorney.

Uncontested paternity cases are acted on by the Superior Court Family Division within an average of thirty to forty-five days of the filing. Contested paternity cases, comprising less than ten percent of the paternity case filings, may take as much as one year to dispose of after the case is filed with the Court. (It should be noted that the total time to bring a support case to the point of Court action may be two to three years due principally to processing backlogs in the D.C. Department of Human Services. Further, unlike most other states, in the District of Columbia few private parties avail themselves of the child support enforcement procedure provided by the D.C. "4-D" Agency, the Department of Human Services, because of the severe backlogs in handling public assistance support cases.)

As noted earlier the reciprocal support area involves those support cases where one or the other party in the suit resides outside the District of Columbia. The Superior Court's annual reciprocal support case intake has averaged between 900 and 1100 cases over the period since the Court was created in 1971. As with local support and paternity cases, most reciprocal support filings - 85% - are "4-D" cases where the filing party is on public assistance, and the petition or claim is initiated by the District government's prosecutor, the Office of the Corporation Counsel. A final point to note

- 22 -

in describing reciprocal support case handling is that while dispositions by the Court occur on the average within 70 days of the case being filed by the Corporation Counsel, or by a private attorney, almost half the cases filed are dismissed by the Court. The principal reason for the dismissals involves unsuccessful service of process on the defendant.

Superior Court judicial involvement in support cases in many instances centers on motions enforcing a prior Court order rather than on the initiation of new actions for support or paternity. Motions filed seek either money judgment or a contempt action, and the Court handles these matters through the Family Division motions judge. In addition, support payments may be enforced by writs of attachment which do not require judicial action.

B. Family Division Motions Court

1. Short and Long Motions

Earlier in this section reference was made to data generated by the Whittier Study showing that contested divorce cases average ten months from filing to disposition in the Superior Court, and that uncontested divorce cases average six months to disposition. During the period between the initial filing of a divorce action and the disposition by the Superior Court as a contested or uncontested matter the Family Division Motions Judge has an active role in disposing of different

types of domestic relations motions. The motions Judge normally considers domestic relations matters Monday, Tuesday and Wednesday of each week, with juvenile motions, and intra-family motions being heard on Thursdays and Friday. Domestic relations motions considered by the Family Division Motions Judge included such matters as temporary custody and temporary support, support enforcement, discovery, and the appointment of counsel.

Motions practice is a very important phase of the flow of a domestic relations case, and in many instances motions decisions will substantially affect the final case outcome. The Family Division Motions Judge handles both unopposed and contested motions. The Superior Court modified its procedures for handling unopposed motions in 1978, so that motions, where no opposition has been filed are ruled on by the motions judge on the papers without scheduling a hearing. This change has facilitated the disposition of unopposed motions by the Court, and has had the additional benefit of having fewer matters set for Motions Court hearing.

Contested domestic relations motions set for hearing are placed on the motions calendar depending on whether the matter is relatively simple, or brief, in which case it is placed on the "short motions" calendar, or complicated, in which instance it is handled as a "long motion." Motions requiring less than thirty minutes to hear are disposed of as "short" motions by the judge in Family Motions Court, while

- 24 -

motions requiring longer than thirty minutes to present usually are placed on the regular contested domestic relations trial calendar for hearing as a "long" motion before one of the two judges assigned to Domestic Relations trials. Because the "long" motion is placed at the end of the contested trial calendar for the day it is almost never reached. Therefore it is rescheduled for the next available time slot on the contested calendar, usually being scheduled two months in advance. As a result parties have to wait at least two months to have important matters such as custody or support heard unless their attorneys are able to obtain an expedited hearing on the contested calendar of their "long motion."

Interviews of practicing attorneys conducted by the Committee revealed that attorneys often will intentionally underestimate the time required to argue a domestic relations motion to avoid being certified as a long motion, and thus not heard in motions court where disposition of short motions usually occurs on the same day. When such matters are certified for hearing as a long motion and the issue is one of the pendente lite custody or support, the party's even more pressing need for expedited relief goes unmet.

Some attorneys interviewed noted that on occasion, when they believe it is in the best interests of their client, they will overestimate the time a motion will take to present in order to delay case progress, knowing again that the motions judge will refer any long motion to one of the two other

- 25 -

assigned domestic relations judges, where because of the press of other trial matters the motion is not likely to be heard promptly. Also in this connection, there appears to be little consistency among judges sitting in the Family Division Motions Court about monitoring attorneys adherence to the time allowances for hearing short motions in that court. Thus attorneys may estimate needing only a few minutes to present their motion, and then exceed substantially the time estimate. The failure of the Court routinely to require counsel to adhere to the time estimates both delays other party's matters being heard and undermines the integrity of the Court's procedures in the Family Division Motions area.

The scheduling of domestic relations matters before the motions judge appears to bear little relation to adopted Court Rules - i.e., pendente lite relief matters are not routinely assigned priority suggested by Domestic Relations Rule 12-I(a) when they are certified to the contested calendar. Attorneys interviewed by the Committee noted that routine motions which may require as little as two or three minutes of Family Division Motions Court time to dispose of, often queue up for several hours before being heard by the Court. In a related vein, some judges handling the Family Division Motions Court assignment organize the workload so as to hear "short" motions in the morning and early afternoon, and longer motions in mid-afternoon. Still other judges ask counsel for each side to estimate the time required for both sides to present

- 26 -

their arguments concerning a motion as a check on abuse by one counsel or the other.

The Committee believes that many routine and/or unopposed motions could be decided by a para-judicial officer such as the domestic relations hearing commissioner with necessary rule changes, and with Court procedures modified to provide sufficient guidance both to the Bar and to the hearing commissioner(s) in this area. The Court Study Committee notes that both the Whittier Study and the attorney interviews conducted in preparing this report identified the pendente lite support and pendente lite custody areas as not being handled effectively by the Family Division Motions Court primarily because of inordinate court delays.

The Committee has examined the pendente lite support issue and concludes very strongly that the Superior Court should experiment with alternative procedures for handling this important area. Courts in some jurisdictions, for instance, decide pendente lite support issues on the basis of sworn affidavits, counter affidavits, and sworn financial statements by each party. Where uncontested or unopposed, these matters could be handled effectively in the Superior Court Family Division by a hearing commissioner; where contested the motions judge could dispose of the matter in most instances on the basis of the submissions, and without resort to a lengthy hearing.

- 27 -

Recommendation: The Court Study Committee recommends that the Family Division Domestic Relations Hearing Commissioner be empowered to act on certain routine motions. The committee believes that criteria can be developed through the rules process to guide the hearing commissioner in areas such as counsel appointment, discovery and others.

Many of those the Committee interviewed told of the critical need for better Superior Court procedures for promptly resolving litigants' temporary support and temporary custody petitions. Ironically, as noted above, the Court rules appear to recognize the importance of early Court action on pendente lite relief requests, though existing rules are not followed consistently by judges sitting in the Family Division Motions Court. Were the Superior Court Family Division leadership to determine the pendente lite support issues require litigation in open motions court, rather than decision in most instances on the basis of sworn affidavits, financial statements, etc. as the Court Study Committee believes preferable, serious consideration should be given to improving the flow and timeliness of cases through motions court. As implied in the previous paragraph, the Court Study Committee supports existing domestics relations rule which provided calendaring preference for pendente lite matters, and it is felt greater adherence to this existing rule should be given. An additional area of reform is to have opposing counsel estimate the time they believe each side requires to present their arguments in motions court. The judge and or calendar clerk could then use this information in setting the daily calendar, and in seeing

that counsel did not take more time than was required. Adherence to time estimates or allowances is essential if the daily motions court proceedings are to move with dispatch. The Committee believes the family law bar would welcome the opportunity to work with the Family Division judiciary to develop improved procedures and practices for facilitating the motions court process.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division leadership work with the family law bar and others as appropriate to revamp the motions court process.

An additional method of handling domestic relations pendente lite matters expeditiously which is used by courts in several other jurisdictions involves the Superior Court's adoption of pendente lite support guidelines as support formulas. These published charts or guides serve to provide reasonably accurate parameters of the level of support a court will order pending full hearing on the permanent support action. The Court Study Committee underscores the primary importance in this area of the Superior Court Family Division employing effective procedures for the expeditious resolution of temporary support matters. The choice of which combination of procedures or methods to use is also important but clearly secondary to the underlying need for timely consideration of pendente lite matters by the court. The Committee learned in the course of its research that a number of Superior Court judges assigned to the Family Division have introduced a

- 29 -

variety of procedural changes to facilitate the flow of matters within this area. Such approaches as setting afternoon motions court calendars, pre-calling calendars to remove inactive cases and summer domestic relations trials are important signs of progress.

The Court Study Committee frequent concern was voiced by lawyers appearing in this court of the need for additional judges to dispose of the workload within reasonable time limits. Also as noted in the beginning of this report the Court Study Committee is cognizant that the Superior Court Family Division effectively has no more domestic relations related judges than the predecessor organizations existing before the 1970 D.C. Court Reform Act was enacted. thus, in addition to the further delegation of responsibilities and certain decision-making to non-judicial personnel the committee believes more judges need to be added to the D.C. Superior court to augment the existing Family Division judicial strength.

Recommendation: The Court Study Committee recommends that three full time judges be assigned to the Family Division to handle the contested domestic relations trial calendar. This increase in judicial strength from the present two judges in this area should be used also to give priority to pendent lite relief matters certified to that calendar.

2. Motions for Temporary Support

In the summary description of Superior Court Family Division divorce case flow at the beginning of this section of the report reference was made to data showing that the contested divorce cases take an average of ten months to be disposed of

- 30 -

by the Court, but often require up to eighteen months. The Committee is aware both from its own collective experience and as a result of interviews with practicing attorneys that many families and former spouses suffer considerably from the difficulty, delay and expense of obtaining orders for the payment of child support and alimony. Difficulty is also routinely experienced later in enforcing Court - ordered support payments. These problems will be discussed in Section II-D of this report. Here we will discuss pendente lite support.

When a support case or a divorce case involving support is begun, many families are often in extreme financial difficulty with no support being paid at all for a period of several months until the first court hearing. Spouses who once paid support often stop paying when the court case is filed, and do not pay until there is an order of the court. Even in routine cases in the D.C. Superior Court it is two to three months from the date a party files a motion for temporary support until a hearing on temporary support is held. Continuances are not uncommon and may further delay this initial Court hearing. Superior Court Family Division procedures provide that, in cases where there is not agreement of both parties as to temporary support, testimony of the parties will be considered and financial statements provided. In the meantime the needy spouse or custodial parent and children may go without often desperately needed financial support.

- 31 -

The court Study Committee concluded that a pendente lite support mechanism should be created; such procedure should be relatively quick and easy to administer, and predictable in outcome. The Committee suggests a combination of approaches including: (a) pendente lite support guidelines; (b) determination of support on the basis of sworn affidavits and financial statements backed by appropriate documentation; (c) determination of pendente lite support by hearing commissioners; (d) time limits for determination of pendente lite support; and (e) retroactivity of awards to the date of filing a motion for temporary support, and limiting dismissals of such orders.

3. Pendente Lite Guidelines

A serious and troublesome issue brought to the Committee's attention in the Court - ordered support payment area was the lack of any substantial predictability as to the support decisions. Attorneys interviewed noted that one consequence of the Superior Court practice of relatively frequent judicial rotation was the uncertainty as to judges' anticipated decisions in determining support payment awards. This situation coupled with the aforementioned lengthy period from filing a support motion to the Court decision has contributed unnecessarily substantial financial difficulty for many families coming to Court for adjudication of their domestic relations dispute, and may contribute to the motivation for

- 32 -

litigating rather than settling the issue in hopes of getting more or paying less.

As noted earlier, Courts in some jurisdiction have formulated pendente lite support guidelines or formulas as means of facilitating prompt and predictable temporary support decisions. A variety of approaches are used for formulating such materials ranging from a combination of narrative guidelines with instructional charts to more specific graphic or box chart procedure. The important point in this regard, the Committee believes, is that there be a readily understandable, easy to apply method, in order that persons requiring temporary support receive a Court decision with dispatch. The Committee has included as Appendix C to this report several different approaches other jurisdictions employ or authors have developed for determining pendente lite support. Each method has advantages and disadvantages. The Court Study Committee prefers a Court promulgated pendente lite chart on the basis that it is easier to administer and for litigants to understand. Whatever procedure or method actually developed must be oriented to the District of Columbia.

The Committee concludes that there should be an examination of the pendente lite formula area by a broadly based group. A concerted effort on the part of a task force or committee on guidelines would be required to devise a fair formula. Guidelines, for example, that take into account only

- 33 -

the earnings of the non-custodial parent impose an unfair burden on the parent when the custodial parent works as well, as is so frequently the case today. On the other hand, merely dividing child support costs in proportion to parents' incomes is not entirely fair either given the added burden on the custodial parent of primary care for the child. Nor is it appropriate that the guidelines merely reflect what is currently being ordered in Superior Court today without consideration of whether it is equitable. For example, a fairly recent California Study found (and we are not sure the District of Columbia would produce a different result):

...The median child support award for the adversary cases was \$900 per year or 45 percent of a moderate budget and \$732 per year for the no-fault cases or 37 percent of a moderate budget.

Even though these figures clearly indicate that child support awards were usually less than half of what was needed to raise a child, the problem is further complicated because the childrearing cost was for a two-parent family. These figures presume that while one parent works the other would be available to care for the child. In one-parent families where the custodial parent must work, the cost of childcare alone may exceed the child support award."

In addition to providing a basic approach or procedure, guidelines need to take into account varying family patterns, as well as provide a method for payment of foreseeable "extraordinary" expenses for children such as orthodonture,

" Seal, "A Decade of No-Fault Divorce: What It Has Meant Financially for Women in California", Family Law Advocate. Vol. #10 (Spring 1979).

- 34 -

psychiatric or large medical expense, day care and private school tuition.

No matter what form such procedures eventually take it is essential that major segments of the bar and community be involved in their formulation, particularly including women's groups and those who frequently represent defendants in these cases. It is suggested that a special ad hoc guideline committee be established to draft the pendente lite guides for submission to the Court Rules Committee. Membership on such a committee should include the Family Law Division of the D.C. Bar, and Bar Association, the Neighborhood Legal Services Corporation, the Legal Aid Society, the Office of the Corporation Counsel, the Women's Legal Defense Fund, and the D.C. Commission on the Status of Women as well as a Family Division Judge and a representative of the Family Division Clerk's Office.

Recommendations: The Court Study Committee recommends the Superior Court Family Division Administrative Judge appoint a broadly based Advisory Committee to assist in formulating proposed pendente lite support guidelines.

Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations Rules and Benchbook be amended to include pendente lite support guidelines. Such interim support guidelines should in no way fetter the discretion of the Court with respect to final support awards.

The Court Study Committee believes that were pendente lite guidelines to be introduced it should be possible to make reasonable determinations of pendente lite support amounts on

- 35 -

the basis of affidavits, financial statements and certain verified financial documentation. The Committee notes that the Court is not to consider fault in determining pendente lite support, (Cruz v. Cruz). If there are to be support guidelines the primary problem for trier-of-fact in this area is determining the reliability of financial information given to the court. For that reason, several interviewees suggested that additional information be required beyond mere financial statements including recent pay stubs, employer's statements, tax returns, cancelled checks, credit card bills and the like.

In the interest of speedy determinations the Court Study Committee would favor proceeding initially by affidavits which are backed by pay stubs and/or an employer's statement. Part of the form motion and opposition could be, in effect, a form Motion for Production of Documents including cancelled checks, bills, W-2s, tax returns, et cetera. To the extent they are available they should be furnished with the Motion for Temporary Support or Opposition. Otherwise, they should be produced within thirty days with the possibility of asking for a hearing to re-open the question of temporary support if the documents later provided demonstrate gross unfairness in the initial award. Additionally avenues should exist for the aggrieved party to challenge the court ruling where it clearly appears to have been erroneous.

Recommendation: The Court Study Committee recommends that a motion for temporary support be decided by the Court on the basis of affidavits, sworn financial statements and pay stubs or employers' statements filed by each party.

- 36 -

Recommendation: The Court Study Committee recommends that motions for temporary support be decided by the Court within fourteen calendar days from the date the motion is filed provided service of process on the other party is obtained at least seven calendar days prior to the proposed court action. To oppose the motion the party served must serve his/her affidavit, financial statement and pay stub or employer's statement on the moving party on his/her counsel at least two days prior to the proposed date for court action.

Recommendation: The Court Study Committee recommends that Court determination on pendente lite support matters be made by a Hearing Commissioner on the basis of motion and opposition, affidavits, financial statements and other required documentation.

The Committee further recommends that a form request for production of documents be included with the form motion for temporary support and opposition to motion for temporary support, and that the Rules be modified to require the Court to impose sanction or find contempt of court when fraudulent misrepresentations are discovered in the financial statements.

Recommendation: The Court Study Committee recommends that a hearing before a judge on pendente lite support be granted when exceptional circumstances warrant a decision outside the guidelines or when later discovered documentation or evidence raises a substantial question about the veracity of written financial statements presented to the Court.

Dismissal of Pendente Lite Orders

In the situation where a defendant, with or without counsel, has appeared for the purpose of a pendente lite disposition, the Court has been known to dismiss an action under Rule 41 for failure to bring the case at issue. This is in spite of an existing court rule which empowers the Court to compel a defendant to file a responsive pleading (i.e., answer)

within a particular time period. A defendant then benefits because by failing to file a responsive pleading to the underlying action any pendente lite relief obtained by the plaintiff can be dismissed. Having often gone to so much trouble to obtain this relief, the plaintiff is now no better off than when he or she was at the beginning of the proceeding.

Recommendation: The Court Study Committee recommends that the Clerk of the Court be precluded from dismissing a case under Rule 41 when a pendente lite order has already been entered, and that the current rule compelling the defendant to file a responsive pleading within the time allotted be enforced.

Retroactivity of Pendente Lite Support Awards

Many family law attorneys the Committee interviewed stated that defendants in contested support cases and in divorce actions where the issue of support is unresolved when the case is filed in Court, have every incentive to delay the disposition of the case, and/or the hearing on temporary support. Unlike domestic relations courts in some suburban Maryland jurisdictions, the D.C. Superior Court has no uniform policy in support cases, divorce-related or otherwise, of making Court awards retroactive to the date the motion for support was filed although this is clearly possible. Some Superior Court judges interviewed favored such an idea but many acknowledged they had never been faced with a request from counsel for such relief. One clear advantage of the Maryland court procedure in this regard is that it removes any incentive the defendant now has for trying to delay court action on the temporary support action.

- 38 -

The Court Study Committee understands that the Superior Court currently provides procedures for funds to be paid into a Court escrow account pending the outcome of Court hearings in several other areas of Court operations. There would seem little reason why a similar approach might not be employed in the temporary support area pending court decision on either the temporary support level or the more permanent support levels, particularly in cases where the defendant seeks continuances in the Court proceedings. At the very minimum the Court Study Committee believes the Superior Court should adopt and publicize a policy allowing support awards to be retroactive to the date of filing of the support motion. This step alone would eliminate much of the tactical jockeying by lawyers in divorce and support cases where continuances often appear to be sought for marginal reasons. It would also address the often repeated position judges shared with the Committee, where while sympathetic to the retroactivity issue, "you can't force a party to pay money they don't have". Use of escrow procedures would enable judges to decide the matter of retroactive support on a more substantive plane than sometimes appears to be done at present.

Recommendation: The Court Study Committee recommends that in instances where the defendant seeks a continuance before the temporary support matter is considered by the Court, such continuance should, if granted, be approved upon the condition that support payments, at such level as provided in Court promulgated pendente lite guidelines be paid into the Court Registry in an escrow account, as of the date of the request of the continuance.

Recommendation: The Court Study Committee recommends that the Family Division Domestic Relations Rules be amended to clearly state that all orders for support or modification of support shall be made retroactive to the time of filing the motion requesting such support, unless there is good cause for not making them retroactive. This procedure is possible under current law but is known to few lawyers and judges, or used by relatively few lawyers and judges.

4. Motions for Temporary Custody,
Appointment of Counsel for Children,
Social Studies

Motions for temporary custody - both on an emergency temporary restraining order (TRO) basis and on a longer pendente lite basis are often the most heated parts of a divorce case. The disposition of this motion may seriously affect the ultimate outcome of the case because the parent with temporary custody is most likely to be ultimately awarded permanent custody. Parents are often bitterly at odds, having just separated. Children may go through a traumatic time of uncertainty, often a period of several months, before the court decides the temporary custody question.

The Committee believes that temporary custody decisions should be made as speedily as possible - in all events within 30 days of service of a motion for temporary custody on the opposing party. Some courts in California, Oregon, and several other states have adopted a mandatory mediation requirement in all contested custody cases. We understand that courts in California have been able to fund mediation programs

by saving judge time in contested custody matters and by raising the marriage license fees and divorce filing fees. In the District of Columbia mediation in some contested family matters is already being done through the Citizens' Complaint Center when requested by individual judges. In California mediation often consists of a single meeting with a trained mediator employed by the court. The mediator is often a professional social worker. He or she may meet separately with the parties and their attorneys, or meet with them together. We believe such a system with some modifications could be usefully implemented in the District of Columbia in contested motions for temporary custody.

The parties should be strongly encouraged to attend a mediation session over the question of temporary custody of their child separately if that is more desirable. The child's advocate, if one is present, should attend as well. Counsel for the parties should be allowed but not required to attend. Mediators should be paid, trained professionals serving either as a permanent unit with the Court Social Services Division or alternatively employed on a per hearing basis. If no agreement is reached by the parties in the mediation session the Committee believes a Court hearing should be held within thirty days of service on the motion for custody.

If the parties agree to joint or split custody both parties should be encouraged to withdraw their motions for temporary custody and oppositions as D.C. law is in question

on allowing the court to order these forms of custody. A party should not be encouraged to participate in mediation on the matter of temporary custody when "good cause" is shown - e.g., when there has been physical violence between the parties that has created too intimidating an atmosphere to allow meaningful negotiation.

Recommendation: The Court Study Committee recommends that orders for pendente lite custody be issued within 30 days of the day the opposing party is served with the motion for temporary custody. Court Rules should be changed to reflect this time limit.

Recommendation: The Court Study Committee recommends that in contested motions for temporary custody mediation by a trained professional mediator be made available at court expense, and specifically offered to the parties by the court.

Counsel for Children and Social Studies

When custody is contested it is clear that parents are divided on what is in the child's best interests. The Court may need someone to advocate directly for the best interests of the child rather than for either parent. The advocate also may be able to help mediate an agreed upon solution that would be in the child's interests. The Committee believes that early in the progress of each contested custody case a Family Division judge should make an affirmative determination on the record with reasons as to whether counsel should be appointed to assist the judge at this critical point in the case, the court may wish to require that the pleadings set forth why counsel the parties do or don't feel

- 42 -

counsel for the child should be appointed. A less desirable alternative would be to have a pool of court-employed, trained paralegal "children's advocates" speaking on the children's behalf as guardians ad litem. Where the Court determines counsel are required costs of this representation should be assessed against the parents where the parents are able to pay for it. Otherwise, paid representation should be provided to the children at public expense.

Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations rules be amended to require the Court to make an affirmative finding in every case in which custody is contested, as to whether counsel is needed for the child or children. Procedurally, this court decision should be made well in advance of the trial date, either at the time of the hearing on the motion for custody -- when such motion has been filed -- or by court review of the case file or through a status hearing in contested cases. The Family Division Bench Book should include material and discussion in this important area.

In addition, both counsel for the children and the court itself should be able to request and obtain a social study of the child(ren) and the homes of the two parents to be done by the Superior Court Social Services Division or by a private agency contracting with the Court.

Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations rules be amended to allow the Court or counsel for the child(ren) in contested custody matters to request a social study to be performed by the Court Social Services Division or by a private agency under Court contract.

C. Contested Divorce Trials

As previously noted, the majority of divorce cases filed each year with the Superior Court Family Division proceed as uncontested matters being heard by the domestic relations hearing commissioner. Each year an estimated 2,700 cases are disposed of through the uncontested calendar.¹⁰ The remaining approximately 1,000 contested divorce trials are heard before two Family Division Judges. According to the Whittier Study materials, nine contested divorce cases are set each court day for trial with an average of six or seven being heard, and two or three continued to a later date -- usually a month or more in the future. Lawyers practicing in the Division have noted that the number of cases actually heard each day has declined recently, with the result that more cases are held over. Extreme and repeated delays in obtaining trials on the contested calendar is the most frequent complaint of lawyers practicing in the Family Division.

In an effort to improve the trial-day schedule of the contested calendar, in May 1977 the Domestic Relations Branch of the Family Division implemented an "on-call" system. Theoretically, under the on-call procedure attorneys are notified the afternoon before the scheduled trial date as to whether they should appear at Court ready for trial the following morning at 9:30 a.m.; otherwise they are to be on call

¹⁰ Whittier, Op. cit., (Family Division p. 11.)

- 44 -

in their offices so they may be contacted by Family Division Court staff to appear within thirty minutes.

The Court implemented the on-call plan at the request of the bar to reduce the amount of time attorneys and litigants have to wait at the Courthouse for an available trial judge. Before the on-call system began parties often had to wait all day at the Court and then not be reached on that day's trial calendar. Most are still allowed to wait at their offices but some cases are called in to wait to form a back-up pool even when no judge is expected to be available within a half hour or at all, thus contravening the intent of the on-call system.

The Court Study Committee conducted a mail survey and analysis of contested domestic relations trial scheduling before and since the institution of on-call. Sampling some 100 cases in each category, the results demonstrated that since the beginning of the on-call procedure fewer cases remain pending on the contested calendar, in-court waiting time has declined, and attorneys expressed considerable overall satisfaction with the on-call program.

Court personnel and attorneys contacted did note a problem of counsel not being ready for trial within the 30-minute notification period provided under the on-call program by the Family Division Assignment Office. Attorneys practicing from offices in suburban Maryland and Virginia, even making a good faith effort, sometimes need more than 30 minutes to reach the D. C. Superior Court. Extending the time allowed to

- 45 -

reach the Court to 45 minutes or even one hour, especially for suburban attorneys, would resolve this problem.

The ultimate success of the on-call system depends on the Court's continuing to use it in good faith (not calling attorneys and clients without anticipation of a judge being present) and the Bar's continued effort to abide by the rules, and the Court's imposing meaningful sanctions when necessary. In theory now if an attorney fails to appear within the 30-minute period, the Court is to dismiss the client's action or, when appropriate, proceed on a default. The attorney involved is then placed on a list of persons not eligible to participate in the on-call program. A system of realistic sanctions needs to be developed for dealing with the tardy attorney before the on-call system breaks down. In practice, the Committee understands that the Assignment Commissioner is being directed by judges to assign only "ready" cases, ones where all parties and counsel are present. Attorneys thus can avoid going to trial by arriving late.

The on-call system has required certain staff changes by the Family Division Clerk's Office. For the system to work effectively the current staff must contact each counsel, update estimated trial times, monitor the likelihood of settlements being reached, and maintain communication with both attorneys. Use of conference telephone call procedures and equipment readily and inexpensively available would directly enhance the effectiveness of the very limited staff resources in scheduling these matters for hearing, and performing related

- 46 -

functions. (See the Court Study Committee's Civil Trial Court Report for further discussion of the telephone conference call procedure.)

The Superior Court is to be commended for experimenting with varying trial schedule procedures such as the "on-call" system used in the Family Division.

Recommendation: The Court Study Committee recommends that the Administrative Judge of the Family Division meet with appropriate bar groups to review the operation of the on-call calendaring procedures, to insure it is still being used as intended, and to assure that sanctions be imposed when appropriate on attorneys who fail to meet the intent of the procedures.

As noted earlier, each court day the Family Division Clerk's Office sets approximately nine contested domestic relations cases for trial. Court personnel contacted during the course of this study indicated that factors determining whether all contested domestic relations cases set for trial will be heard include:

- a. the complexity and variability of the individual cases set for trial;
- b. the approach of the attorneys in the case; and
- c. the judge's manner, approach and experience with the domestic relations area.

Superior Court Chief Judge H. Carl Moultrie, I, in his June 1978 policy statement upon taking office, expressed strong interest in experimenting with the use of an individual calendar system for hearing some domestic relations cases. Generally in an individual calendar system a single judge handles

all judicial tasks relating to a case. The Court Study Committee believes that the resolution of particularly complex domestic relations cases would be facilitated through partial adoption of an individual calendar system in the Family Division. Additionally, it would appear that use of this procedure would assist the Superior Court in reaching a higher percentage of contested domestic relations cases on the daily calendar, both because the Court would know in advance more about the complexity of individual cases, and because for lengthy contested trials it would be able to schedule fewer other cases for trial.

It should also be noted that resort to alternative calendaring procedures in the domestic relations area, such as Chief Judge Moultrie's interest in an individual calendar for contested domestic cases, may have the added benefit of lowering the cost of justice for litigants. Under current Superior Court Family Division procedures, when a contested domestic case is set for trial there is no assurance the case will be tried on the date set by the Court. However, each time the case is set for hearing counsel must prepare any witnesses in the case, provide for any expert witnesses who may be involved in the case, and do a detailed review of the case in order to effectively represent his or her client. Each of these tasks is time consuming, and ultimately reflects in higher legal fees for such representation. Many cases require full preparation two or three times before they are actually reached for trial.

Recommendation: The Court Study Committee recommends that the Superior Court experiment with the use of an individual calendar system for certain complex domestic relations cases, assigning individual cases to a single judge for all Court proceedings in the case. Appropriate bar groups should assist the Court in devising criteria and procedures for selecting cases to be placed on such a calendar. A Domestic I - Domestic II system could resemble the present system used in the Civil Division.

It was noted in the preceding section concerning the motions court that additional judges may be required in the Family Division. This step appears particularly appropriate in the contested domestic relations calendar. Current Family Division practice reveals that these contested cases often require as much as eighteen months to reach final Court action, and are often scheduled for several different trial dates because the Court does not reach many of the cases set for hearing each day. Reducing the daily trial calendar to a level approximating the daily average number of cases reached in the past would assist litigants and their counsel in trial preparation. This, however, is clearly less desirable than assigning an additional judge to Family Division contested domestic relations trials. This addition could also serve to assist in the early resolution of contested motions.

Recommendation: The Court Study Committee recommends that an additional full-time judge be assigned to the domestic relation contested calendar, and in the meantime the daily calendar should be reduced to more nearly approximate the daily capacity of the court.

For the same reasons that mediation would be desirable in contested custody motions, it would be desirable in

- 49 -

contested custody cases where there was no motion for temporary custody. The same mediation arrangement described earlier should be considered prior to contested custody trials when there was no earlier mediation effort at the time of a motion for temporary custody.

Recommendation: The Court Study Committee recommends that in every case in which custody is contested mediation by a trained professional mediator be made available at court expense and specifically offered to the parties unless there was an earlier mediation effort at the time of a motion for temporary custody. Mediation sessions should be held as far ahead of the projected trial date as possible.

Case law in the District of Columbia suggests that trial judges should order alternate or joint custody only in extraordinary circumstances. As a result, parties who agree to joint custody in a separation agreement are forced to keep their separation agreement out of the court record and to rely solely on contract remedies for enforcement of the entire agreement. While, as a general rule, joint custody is not advisable if the parents are not cooperative with one another, it seems unnecessary to deprive the court of the option of ordering joint custody and to deprive parties of the ability to have other matters incorporated in a court order or decree simply because they have decided to use a joint or split custody arrangement for their children. For that reason the Committee believes the D. C. Code should be amended to clearly allow the court to issue an order for joint or alternate custody when it is in the child's best interest.

- 50 -

Recommendation: The Court Study Committee recommends that the D. C. Code be amended to allow the Court to order by agreement of the parties joint or alternate custody when the Court finds that it is in the best interests of the child, and that there is reason to believe the parents can succeed in such a custody arrangement.

D. Enforcement of Support Orders

Once a Superior Court Family Division judge orders support payments to be made to a party in a divorce or a support case, the Court itself takes no further action on its own to see that support payments are made. An estimated 85 to 90 percent of D.C. Superior Court support orders provide that payments are to be made through the Court Registry, which receives and disburses payments and keeps records of payments made through that means. (The Committee studied the court's Family Finance Office and was most impressed with the efficiency of that unit in discharging its administrative responsibility. Payments received by the Court Registry pursuant to Court orders in the support area are recorded and the transactions completed by the Family Division Office within a matter of days on the average.)

As is the case nationally, most families in the District of Columbia never receive anywhere near the full support amounts which the Court orders to be paid. In fact, support payment percentages in the District of Columbia lag behind the national average by at least ten to fifteen percentage points, though considerable attention has been given

- 51 -

to this area in the past two years by a number of District Government agencies, including the Superior Court.

The D. C. Superior Court assumes no affirmative role in enforcing its own orders for the payment of alimony and child support. As a matter of unwritten policy, responsibility rests entirely with the parties for enforcing child support or alimony orders, if they are to be enforced at all. Though the Court has excellent records and automatic data processing machine capability in the Family Finance/Court Register area, no notice is sent to the attorney for the party who was to receive the support when payments are behind; no information or notice is sent to the party herself/himself as to what remedies are available (such as attachment of wages, property or bank accounts, or requesting contempt of court proceedings); and no reminder notice is sent to the person who is under Court order to make periodic payments, notifying them that the payment is past due, or ordering them to show cause why a contempt order should not be issued. In fact, because defendants' attorneys may not have sent copies of the original Court orders to the defendant, or defendants may have represented themselves pro se, they often do not receive a copy of the Court's order or any written direction on where or how to pay.

The Court Study Committee believes the Superior Court Family Division should institute expanded support order enforcement procedures whereby a party not receiving a payment previously ordered would receive a notice explaining what procedural

- 52 -

options exist -- such as coming to Court to initiate attachment proceedings (garnishment) on the non-complying party. The Court should concurrently send a notice to the defendant stating that payment has not been received and that a show cause order may be issued if payment is not forthcoming promptly. (It should be underscored that most if not virtually all the expenses to the Court for these suggested new procedures are reimbursable under the existing Federal "IV-D" program explained below.)

The Superior Court's passive or neutral role in the enforcement of its orders for the payment of family support contrasts sharply with its rigorous enforcement of Court orders for the payment of fines for criminal cases, child-born-out-of-wedlock (CBOW) cases, and traffic violations.¹¹ When a criminal defendant fails to meet a judicially ordered payment schedule, the Superior Court Finance Office routinely forwards the court jacket to the judge who made the order. The Committee was informed that often this is done within one week of the payment due date and that as many as 50 percent of the cases may require collection action. Judges may issue a warning letter, but more typically issue either a judicial summons/show cause order, or a bench warrant. The

¹¹ While some child-born-out-of-wedlock cases are still being handled by the Superior Court, the underlying criminal non-support statute was revised through the enactment of the 1970 D. C. Court Reform Act. Data on support order payment percentages realized through that program are available within the Superior Court, and indicate how effective a strong and continuing court role in enforcing judicial orders for support can be.

Finance Office estimated that virtually 100 percent of ordered criminal fines are actually collected through this Court practice of routine monitoring and enforcement of judicial orders by the Superior Court itself. The execution of this policy in criminal fine collections has been so successful that the Superior Court should consider a more active role in the equally important area of enforcing court orders for family support. [The Committee fails to understand why the Court sua sponte acts to assure that its judicial orders in one area are complied with, but takes no similar initiative in other areas.] This point is particularly apparent when one recalls that prior to 1971 the Court did routinely enforce child support orders under the CBOW program -- and still does for cases of this type remaining in the system. Also, in almost 90 percent of the support cases the Court is officially aware of the lack of compliance because payments are to be periodically made through the Court Registry. There seems little justification except the accidents of history and practice for the Superior Court Family Division not taking this initiative.¹²

Recommendation: The Court Study Committee recommends that the Family Division send to all parties ordered to pay child support or alimony through the Court Registry a certified

¹² The Committee was informed during its research that some years ago the Court proposed a support order enforcement initiative similar to that herein favored by the Court Study Committee, but that opposition was voiced from some groups within the Bar.

- 54 -

copy of the court order and a letter or card with directions on where and how to make payments.

The Court Study Committee takes note that a first step toward rigorous enforcement of some support orders has been taken. The Superior Court has been cooperating in the support enforcement program of the Department of Human Services Office of Paternity and Child Support Enforcement. This program is federally supported under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.). Adopted in 1975 in response to a nationwide failure of parents to pay support, the purposes of the IV-D program are twofold. One is to recoup government expenditures under the Aid-to-Families-with-Dependent-Children Program (AFDC) by collecting, usually from the father, child support owed to families receiving AFDC. The second purpose of the IV-D program is to enable non-AFDC receiving families to remain financially solvent and independent by assisting them at a very low cost in collecting legitimate child support payments from absent parents. (The Act notably does not include dealings with alimony payments.) IV-D program activities may range from initial establishment of paternity to actual final collection of support payments. Operating expenses, including many court costs, are 75 percent federally reimbursed; however, salaries of judges and judicial support staff have not been reimbursable in the past. In addition to receiving operating costs, the District of Columbia

- 55 -

under the IV-D program may keep 50% of all AFDC attributable collections.

While cognizance is taken of the potential long-term effectiveness of the Title IV-D program, the Court Study Committee was informed by a number of attorneys with extensive domestic relations practices of the very difficult financial position families not receiving AFDC are in when Court-ordered child and/or spousal support payments are not forthcoming. The Committee believes that it is often unrealistic for the Court to expect that a party will have enough money to hire a private attorney to enforce a support award at a time when she is not receiving the financial support which the Superior Court previously ordered in the first instance. While the Office of Paternity and Child Support Enforcement is theoretically required to obtain and enforce support orders for non-AFDC recipients, their cases are buried behind the backlog of thousands of AFDC cases and the family may be without any child support for months or years until their case is reached. Because they receive no AFDC payments, these families may be worse off than those who receive AFDC payments.

At present in the District of Columbia, primary initial responsibility for collection of support for both AFDC and non-AFDC recipients is lodged in the Office of Paternity and Child Support Enforcement in the Department of Human Services. Court appearances in these cases is done by the Office of Corporation Counsel. (While private counsel may bring such

- 56 -

matters before the Court on behalf of the party not receiving support, statistically most actions are brought by the Corporation Counsel and by DHS.) For the past two years, since the AFDC support enforcement program began handling large caseloads, there has been a backlog of upwards of 30,000 or more AFDC cases at the Department of Human Services. The child support collection program in the District of Columbia has had numerous problems, and remains one of only six state programs in the Nation where administrative costs exceed the funds generated.

While the thrust of the above discussion has been on deficiencies in the support enforcement area, it is important to note that the Superior Court Family Division processes and adjudicates most support enforcement cases brought to it within 30 to 45 days of Court filing. The support staff of the Family Division Clerk's Office appears most conscientious in facilitating the flow of cases.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a policy of enforcing support orders on a sua sponte basis when the Court is aware that the existing Superior Court order is not being complied with. The Court could implement this process by employing the present computer system of the Family Finance Office to: (a) send out notices promptly to the recipient's attorney when a support payment has been missed; (b) send notices to the support recipient that support payments have not been received by the Court, and describe the remedies available, i.e., attachment, contempt, and Uniform Reciprocal Enforcement of Support Act procedures; and (c) send an overdue notice to the party subject to the Court order informing him/her that the payment has not been received in the Court Registry and that a show cause order may be issued as

- 57 -

to why he/she should not be held in contempt. If the payment is not received, the judge who originally issued the order should issue an order to show cause and hold a hearing on it, issuing a contempt order if appropriate.

The notice to the recipient should include telephone numbers for legal service organizations and the Department of Human Services Office of Child Support Enforcement. The information provided should also inform the recipient that an attachment of wages can be filed directly if he or she knows where the party ordered to pay support works, and it is within the District of Columbia, or is the District or Federal Government, or if the employer has a registered agent in the District of Columbia. The overdue notice to the defendant should include information explaining that if payment is not being made because of loss of job or other similar reasons it is necessary to go to the Court to seek an adjustment in the support obligation.

Recommendation: The Court Study Committee recommends that appropriate bar groups prepare, as a public service, informational material for use by the lay public on the steps involved to enforce support orders or to obtain modification of support awards in the District of Columbia. The materials should briefly describe wage attachment and other methods for pursuing support payments. Copies of these informational flyers should be available for distribution at the Family Division Clerk's Office.

One possible method of preventing arrearages in support payments is through wage assignments at the time the order is first entered. By this mechanism the employer sends a certain amount of the employee's salary directly to the

Court Registry. It is the Committee's understanding that the D.C. Council is considering certain legislative changes in this area in support cases. The Committee believes any legislative revision in this area should include divorce actions and other proceedings where support is ordered by the Superior Court. It is currently possible to make such a wage assignment at the time of divorce if the parties are agreeable. Consideration should be given to the possibility of the judge ending wage assignments at the time of the divorce decree being entered particularly when the Court has knowledge that the party ordered to pay temporary support has not done so.

Recommendation: The Court Study Committee recommends that Section 16:912 of the D. C. Code be amended to clearly allow the Court, at the time of the divorce decree, to order a wage assignment to meet child and spousal support obligations prospectively. Currently the D.C. Code only provides the wage assignment procedure when arrearages have accrued.

There are several other procedural matters relating to the support area that merit brief mention in this report. The first concerns the lack of consistency in format and language in Court Orders for support. Interviews with staff of the Family Finance Office revealed a substantial problem in translating the intent of many Court support orders into the computer system used by the Superior Court or through the Court Registry for monitoring such payments. It may be productive for the Administrative Judge of the Family Division to meet with the Court Fiscal Officer and the Family Division Clerk to consider developing form support orders to ameliorate this problem.

Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge, in conjunction with others, develop form support orders.

Presently, when the parties have entered into a separation agreement providing for the payment of support or alimony, the parties must, in effect, choose between two methods of enforcing payment of agreed-to support amounts. The parties may agree to have that amount made part of a court order and subject to all the enforcement powers of the court, including contempt of court, or the parties may choose to have the agreed-to support amount remain a solely private contractual obligation and subject to enforcement by the parties as a contract.

In many jurisdictions, these remedies are not considered to be mutually exclusive, and the parties may agree that the entire range of enforcement remedies will be available to the parties by agreeing that the separation agreement will be "incorporated but not merged in the final decree of divorce." Although the matter is not clear in this jurisdiction, the Superior Court's current interpretation of case and statutory law tends to be that an election must be made. The reasoning appears to be that, under current case law, contractual agreements to pay support cannot be modified downward by the court simply because of a change in circumstances of one of the parties (just as the court cannot decrease a person's other debts simply because he is unable to pay), and that it is inappropriate to use the contempt powers of the court to

enforce payment of a contractual amount which the court in its equitable jurisdiction could never order the person to pay.

The Court Study Committee believes that the parties should be permitted to bargain for the whole range of enforcement mechanisms. This can be allowed without putting the Court in the position of using its contempt powers inappropriately or of having the court arbitrarily restricting parties bargaining option.

Recommendation: The Court Study Committee recommends that the D. C. Code be amended to more clearly provide that the parties may elect among alternative approaches as to the inclusion or exclusion of the separation agreement into the final court order for divorce. Among the choices the parties should have is that the separation agreement be: (a) incorporated in the court order; (b) ratified and affirmed by the court but not incorporated in the court order; and (c) incorporated but not merged in the court order. The statute should provide that if option (c) is chosen, the support-paying party will be able to move to reduce the amount of the court-ordered support while leaving the balance as a contractual obligation only, not subject to enforcement by contempt of court.

The question of parentage is often a factor in support cases. Two issues in the area of parentage were of particular concern to those interviewed by the Court Study Committee: blood tests, and the statute of limitations.

The D. C. Code now includes a provision that allows blood tests to be ordered and performed upon request of the putative father, and only the putative father can choose to introduce these results in situations where they might exclude him as being the child's father. When this law was implemented

in the 1950's, it was scientifically possible to conduct tests only on red-blood cells, which would be limited to excluding up to 5 percent of the population. Since parentage hearings at that time were also jury trials, it made sense to exclude test results which did not exclude the alleged father for fear that lay people on the jury might conclude that a non-excluded respondent was the father.

Need for this evidentiary restriction no longer exists. There is no right to a jury trial, and parentage hearings are now assigned to judges in the Family Division Domestic Relations Branch. More importantly, modern science can now exclude over 90 percent of the population by performing HLA tests on the white-blood cells of the relevant parties, thereby providing valuable evidence to the judge having to make this difficult decision.

In 1980 the HLA blood tests cost \$100 at area hospital laboratories. Notwithstanding this cost, which might be onerous to many parties in parentage proceedings, making the tests available to all parties would lead to a greater possibility of earlier settlement or judicial adjudications.

By arranging such a procedure, the Court might run a risk of the putative father trying to delay the ultimate adjudication in order to avoid his support payment obligation. However, only a small percentage of respondents in these cases actually denied their parentage. Regardless of the percentage, further abuse of this process could be avoided by requiring a

contribution to the cost of the test in proportion to the financial ability of the putative father similar to what is done now in the appointment of counsel pursuant to the Criminal Justice Act.

Recommendation: The Court Study Committee recommends that the D.C. Code be changed to allow either party at the parentage hearing to require both parties and the child or children to submit to a properly conducted blood test, and that the results of said tests be allowed to be admitted into evidence by either party so requesting in accordance with the normal rules of evidence.

Recommendation: The Court Study Committee recommends that steps be taken to provide HLA tests to all relevant parties, and that a procedure be organized that will allow these tests to be performed at a cost to the party requesting them in accordance with his or her ability to pay using accepted in forms pauperis screening procedures.

In the 1978-1980 period three separate Superior Court judges have ruled on the issue of whether it is unconstitutional to limit the jurisdiction of the court to rule on the issue of parentage for a child born out of wedlock after the child's second birthday or more than one year after the last child support contribution by the putative father to the child's mother. This statute of limitations was struck down in an opinion by Superior Court Judge Gladys Kessler in 1978 on the grounds that the law denied the same protection to the out-of-wedlock child that was offered to a child born to married parents. Her decision was appealed to the District of Columbia Court of Appeals; it was declared moot when the child became emancipated. Subsequently, an opinion by Judge Tim Morrison

was rendered, but has yet to be resolved on appeal in the D.C. Court of Appeals. Also pending before the Court of Appeals is a decision by Judge John F. Doyle, who, upheld the statute of limitations in the face of constitutional challenges.

The Committee understands that the D.C. Council has legislation under consideration on the question of the statute of limitations in parentage cases. The Committee generally favors the abolition of the statute of limitations in parentage cases.

Recommendation: The Court Study Committee recommends that the District of Columbia Council enact legislation abolishing the statute of limitations in parentage cases.

The final issue in the support area concerns the projected substantial increases in workload as a result of the IV-D Support Enforcement Program. With an estimated 25,000-plus support case backlog in the Department of Human Services, which will pass through the Superior Court within the next two or three years, it appears highly unlikely that the Court will be able to discharge its responsibility in a timely fashion using present staff. The Court Study Committee understands that a bill is pending before the D.C. Council to create an administrative adjudication procedure within the Department of Human Services for child support cases involving A.F.D.C. cases. The Committee does not favor adjudicating A.F.D.C. related cases outside the Superior Court while other child enforcement matters continue in the Court. The Committee

believes the Superior Court is the appropriate forum for considering these matters. The Committee urges the early attention of the Court Executive and others so as to be prepared for this emerging workload problem. The Court should consider seeking additional temporary positions from the D. C. Council, if need be, to meet this workload demand.

Recommendation: The Court Study Committee favors a continued Superior Court role in all cases involving enforcement of support orders.

E. Appointment of Counsel

When a party files for divorce in the D.C. Superior Court the defendant to the suit is officially notified of the matter by receiving a copy of the case papers, either through being personally served, or via registered mail. The defendant has a 20 day period to reply to the Court regarding the action being brought. In those instances where no reply is received by the end of the 20 day period, Court procedures provide that the plaintiff must complete a motion asking the Court to rule whether counsel needs to be appointed for the defendant. The Family Division Motions judge considers these unopposed motions in chambers and plaintiff's attorney is informed subsequently of the decision. The Whittier Study, referenced earlier, estimated that in 1979, of the 1950 divorce cases for which service of process was made but no answer was filed within 20 days, - and presumably, a request for waiver of counsel was

filed - the Court would determine that counsel for the defendant was needed in 58 percent of the cases (1140), and not needed in 42 percent of these cases (810 cases).

Interviews conducted by the Court Study Committee with family law practitioners revealed a frequent concern about the serious lack of consistency among Superior Court judges sitting in the Family Divisions Motions Court as to the decision of whether counsel is required to represent the defendant in divorce cases. Some judges routinely appoint counsel, others do it only in certain situations such as where children are involved. This inconsistency is perhaps most easily explained by the frequency, historically, of judicial rotation through the Family Division Motions Court position. A further, and perhaps, more relevant explanation is the absence of any procedural guidance to judges, or judicial training by the Court on such relevant topics as the 1977 D.C. Divorce Act.

Plaintiffs' divorce cases may be adversely affected by inconsistent judicial decision-making in appointing defense counsel in divorce cases. First, the Committee was informed through interviews with Superior Court Family Division staff that there has been an increase in the past several years in the number of motions filed to vacate default divorce judgments on the basis that the unrepresented defendant believed counsel was to have been appointed for them. Committee members were informed, in the attorney interviews, of divorce cases in the

Superior Court where the judge had denied certain requested relief in the final divorce decree because the defendant did not have an appointed counsel even though the Family Division Motions Judge had determined that an attorney was not required.

It should be noted that the problem of inconsistent judicial action in appointing counsel in divorce cases has only come to the fore since the enactment in early 1977 of the new D.C. Divorce Act by the Council of the District of Columbia. This statute facilitated access to the Court by the pro se litigant seeking a divorce, though data to date reveal that less than ten percent of divorce plaintiffs are requesting to proceed pro se.

Prior to 1977 in all divorce cases filed in the District of Columbia, when a defendant failed to respond within 20 days to a properly served complaint summons, the person seeking the divorce would need to deposit \$100 in the Court Registry, have a "disinterested" attorney appointed to represent his or her spouse, and wait a minimum of 30 days for a response.

The District of Columbia Council considered this process and after public hearings found no reason to require court-appointed counsel in all contested divorce cases, a requirement found to be unique among all other jurisdictions where, as in other civil action, the party choosing to ignore the validly served complaint and summons ran whatever risks existed of being proceeded against in default. The D.C. Code

was then amended to allow the Superior Court to use its discretion in deciding whether a court-appointed counsel for the defendant was "necessary and proper."

The Court Study Committee found that the Family Division counsel appointment procedure has not been organized pursuant to the court rules that empower the family motions judge to rule on the merits of each case as to whether counsel is necessary. In the opinion of many of those interviewed, leaving the appointment option to the individual judge's discretion has led to the appointment of counsel in many cases where it was neither "necessary or proper". Some judges still require attorneys in all cases. We conclude that the Council of the District of Columbia intended this procedure to be the same as in other jurisdictions, and except for extreme circumstances option of appointing counsel should be exercised only in the rarest of instances.

Recommendation: The Court Study Committee recommends that the D.C. Superior Court Family Division Bench promptly implement the intent of the statutory changes in the 1977 District of Columbia Divorce Act that provides for the appointment of disinterested counsel for defendants only in the most extenuating circumstances.

Interviews with practicing attorneys and a number of judges of the Superior Court who have sat in the Family Division, revealed the existence of informal criteria which judges use in making the determination as to whether counsel should be appointed to represent defendants in divorce or support cases. Factors considered include:

- 68 -

(a) whether the parties have been married a substantial period of time;

(b) whether there are substantial property rights to be adjudicated, especially real estate;

(c) whether there are children's interests to be considered, i.e., custody, visitation, support;

(d) whether there exists a separation agreement to be incorporated; and

(e) the manner in which the defendant was served, i.e., publication, posting, and whether the defendant is out of the country, or in prison.

The Committee's interest is that the application of these considerations should be consistent in the Superior Court Family Division over the long run for judges sitting in Motions Court.

Recommendation: The Court Study Committee recommends that the Superior Court Domestic Relations Rules, and the Family Division Benchbook include criteria as to when an attorney is to be appointed by the the Court to represent defendants in divorce actions. Factors to be considered should include length of the marriage, support and/or custody of minor children, existence of real property, and take into account the statutory intent of the 1977 District of Columbia Divorce Act.

1. Procedures for Appointing Counsel

Attorneys are appointed to represent defendants in some divorce cases, with the decision to appoint and the actual appointment being made by the Family Division Motions Judge. Were the Court to adopt the Committee's preceding recommendation to promulgate criteria for deciding when counsel

is required, the appointment function could be performed effectively by a hearing commissioner or other para-judicial officer who must be a lawyer to hold such position. For example, the domestic relations hearing commissioner using guidelines promulgated by the Court, could make the determination in almost every case as to whether counsel should be appointed for the defendant, and additionally make the counsel appointment.

2. Duties, Qualifications and Competence of Appointed Counsel

Other issues relating to the defense counsel appointment process in divorce cases include the duties expected of appointed counsel, the qualifications of those appointed, the level of compensation for those appointed, and the in-court paperflow procedures in the appointment process.

Court appointed attorneys' performance in representing defendants in divorce actions in the Superior Court appears to be very uneven. Court personnel interviewed by the Committee noted an increase in Court - ordered removals in cases of this type. Many domestic relations attorneys interviewed felt that existing court rules and policies in this area were insufficient.

The Committee believes the Court has an affirmative responsibility - as the body appointing the counsel - to assure both that counsel understands the duties expected, and that the duties are performed. At a minimum the Committee believes the Court should require that appointed counsel has:

- 70 -

(a) reviewed the court jacket upon appointment to determine the address at which the defendant was served;

(b) diligently attempted to contact the defendant by regular and certified mail to the defendant's business, and home addresses;

(c) contacted plaintiff's counsel to determine where the defendant might be located.

The court Study Committee supports amending the existing Family Division domestic relations rules (Rule 17(d)(3)(II)) to require the filing of a form affidavit in lieu of answer which specifies the duties defense counsel has performed. Such a form affidavit should be mailed to defense counsel with the order of appointment and should contain the name, address, and telephone number of the plaintiff's counsel. The Committee also favors use of existing D.C. Bar Board on Professional Responsibility disciplinary procedures for counsel failing to meet their minimal obligations in these cases. Other than being a member of the D.C. Bar, no special qualifications, knowledge, or demonstrated competence in domestic relations law is required for an attorney to be on the Superior Court Family Division appointment list, and in turn to be assigned divorce cases by judges of the Family Division. If the Court's underlying purpose for providing a mechanism to appoint counsel in such cases is to insure that defendants' interests are minimally protected, it would appear that the absence of any qualification standards for appointing attorneys undermines substantially the Court's basic objectives. While the court Study Committee supports completely the Court's

objective of assuring that the interests of unrepresented defendants in divorce cases are protected, we do favor improved procedures in the appointment area. For example, the Superior Court's recent judicial leadership through the Braman Committee on the Appointment of Counsel in Criminal Cases, demonstrates that competency standards and other practical methods of assuring the effective assistance of counsel can be developed.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division leadership institute procedures to assure that attorneys receiving court appointments in family law cases have relevant knowledge and competence. The Committee would encourage the Court to adopt periodic continuing legal education standards, and/or recent past domestic relations practice experience requirements as minimal criteria for attorneys being permitted to be appointed by the Court to domestic relations cases.

Existing Court rules require appointed counsel in divorce cases to file responsive pleadings within 30 days of receiving the appointment. Given the very real service of process problems in these cases it is not unusual for counsel to be unable to reach the defendant until near the end of the 30 day period, leaving an insufficient amount of time to prepare pleadings.

Recommendation: The Court Study Committee recommends that Superior Court Domestic Relations Rule 17-D-3 be amended to allow appointed counsel in divorce cases up to 45 days to file a responsive pleading.

3. Appointed Counsel Payment Levels

The one hundred dollar payment provided appointed counsel in divorce actions is too low for an attorney to be

compensated fairly for the legal duties necessary in these cases. The amount has not been increased since the Superior Court was created in 1971. The Court Study Committee would suggest that the Family Law Division of the D.C. Bar and the Court review this matter, and move to increase the allowance commensurate with the work requirements. The Committee recognizes the competing interests in this area of the plaintiff who may be required to pay a larger amount for legal services for the defendant and the practical fact that the minimal services necessary cannot be performed for \$100. The Committee also would note that it appears many attorneys, and some judges, are unaware that current Court procedures allow an attorney to petition for compensation over the one hundred dollar allowance when circumstances merit. A higher award in such instances is made at the discretion of the trial judge pursuant to the circumstances in the particular case, and relevant case law. The Committee would encourage the Court, in the interim, before serious examination of raising the appointed counsel fee level is completed, to notify attorneys more routinely of this existing provision.

4. Appointment of Counsel Paperflow

In the opinion of the Court Study Committee the paper flow process to appoint counsel in divorce cases in the Superior Court Family Division is cumbersome and needlessly lengthy. As noted previously, according to the Whittier Study the motions judge decides that counsel for the defendant is

needed in almost 60% of the uncontested divorce cases. (Presumably a more consistent application of the legislative intent in the 1977 D.C. Divorce Act will result in fewer judicial decisions to appoint counsel in these cases.) The counsel appointment decision takes about 30 days on the average from the date the motion is filed to the Court action. When the Court deems that counsel is required a second motion must then be filed, and the Court then makes the actual counsel appointment. This second step according to the Whittier Study takes an additional 30 days.

For legal service organizations filing many divorce actions with the Family Division each year, the Court has informally allowed plaintiff's counsel to file the two motions relating to counsel appointment at the same time. This procedure speeds up the process considerably, lessens the number of times the judge and the Family Division Clerk's office has to handle and/or review the case jacket, and by all accounts has worked well. The Court Study Committee favors extending this procedure to plaintiffs in all divorce cases. At the same time the Committee is cognizant that some retained counsel in divorce proceedings will likely not avail themselves of this possible procedural economy as it may necessitate the plaintiff having to deposit the \$100 appointed counsel fee at the outset of the case rather than if ordered to at a later stage in the process. This facet of the issue wouldn't concern many legal service organizations as their clients may be

eligible to proceed in forma pauperis. The Court Study Committee favors a change in the Superior Court Family Division operating policies to permit plaintiffs the option of concurrently filing the precipe on the issue of the appointment of counsel for a defendant, with the praecipe to appoint counsel.

Superior Court Domestic Relations Rule 41-F provides that the Court may dismiss a case if there has been a failure to prosecute or bring the case to issue within six months of filing. As noted earlier in the text, just over ten percent of annual divorce case filings (500 of 4,200 annual filings) are dismissed by the Court pursuant to D.R. Rule 41-F. Interviews conducted by the Committee revealed that in many instances attorneys are required to file either extension motions or reinstatement motions with the Court to extend the time to bring a case to issue in order to avoid having their domestic relations case dismissed under Rule 41-F. The cumulative effect of the Superior Court's various different procedural requirements in the domestic relations area, such as publication and counsel appointment, can easily consume six months now provided by the Rules to bring a case to issue. The Committee would urge the Court to change the Domestic Relations Rule 41-F provisions to provide a nine month period to bring a case to issue before dismissing the case for failure to prosecute. Extending the 41-F Rule to nine months from the present six would also reduce the court workload now expended to process extension motions, and in other areas.

5. Assisting Pro Se Litigants with the Necessity of Counsel Decision

The preceding analysis examined issues surrounding the Superior Court Family Division's procedures for appointing counsel to represent defendants in uncontested cases. With the enactment of the 1977 D.C. Divorce Act both plaintiffs and defendants may increasingly be coming before the Family Division seeking a divorce without benefit of counsel. Data developed by the Whittier Study on the Superior Court Family Division indicate that in the first full year of operation under the new D.C. Divorce Act less than 10% of court filings seeking divorces were pro se. Interviews with Court personnel and practicing attorneys revealed that a number of the persons proceeding pro se in divorce cases before the Superior Court have cases involving issues which need legal advice if the party's interests are to be protected. Under current procedures these cases usually come before the Family Division Domestic Relations hearing commissioner who as long as the pleadings are "technically" sufficient, is effectively precluded from "requiring" one or both parties in such cases to secure legal advice, even when such action may be felt to be needed, or in the parties best interests.

The Court Study Committee believes the Bar has an obligation to assist the Superior Court, and pro se parties in this area through developing general criteria or guidelines as to when legal advice is particularly appropriate or needed in divorce actions. Any such guidance should be developed in

conjunction with the Court, and promulgation should take the form of informational literature available at the Superior Court Family Division offices, and elsewhere.

Recommendation: The Court Study committee recommends that the family law bar develop and disseminate informational material as to when domestic relation parties should seek advice of counsel in pursuing matters in the Superior Court.

6. Form Pleadings

Some jurisdictions outside the District of Columbia which have enacted no-fault divorce laws have also revised or instituted various form pleadings to facilitate parties' access to the Court. California, for example, has available easily understandable domestic relations court forms covering the summons and complaint, proof of service, petition and the responsive pleading. The availability of similar forms for use in the D.C. Superior Court Family Division would facilitate access to the Court by pro se litigants and counsel alike, and additionally may assist in assuring that domestic relations pleadings filed are legally sufficient.

Recommendation: The Court Study committee recommends that the Superior Court adopt form pleadings in the domestic relations and related areas. The Family Division administrative judge and/or the appropriate rules committee should consider patterning such form pleadings and related forms on the California sample material appended to the report.

F. Calendar Control

The problems involving domestic relations cases most often noted by the bench and the bar, in interviews conducted

over the past two years, concern the unavailability of judges, increasing delays in the court process, and the unpredictability of the contested trial calendar. Most attorneys interviewed had their own series of "horror stories" in which clients and witnesses would arrive at the court, or attorneys would be placed on call, only to find that their cases were not reached because the assigned judges were hearing other cases or were otherwise unavailable. Even when the attorney's case is placed on call, if it is not reached on this scheduled date, he/she is still expending his time and the client's money in preparation for that date. Aside from the inconvenience caused, the parties and witnesses experience mental and emotional anguish when they climb aboard the contested trial "roller coaster".

The Virginia and Maryland court systems use quite different procedures in the calendaring area. In Maryland, the courts employ hearing masters or commissioners for contested domestic hearings. In Virginia, members of the private bar serve as surrogate judges. In both jurisdictions, the contested domestic hearing people other than judges make findings of fact and recommend appropriate dispositions to the local sitting judge. Either party to the proceedings can object to the finding or recommendations by filing exceptions, and either party is entitled to a hearing before a judge, who decides whether to accept or reject these reports based on the evidence produced.

By contrast, in the District of Columbia Superior Court, there are only two judges assigned full time to hear contested domestic relations cases, and for six months prior to April 1, 1981, one of these two judges had an additional "part-time assignment" in the fiduciary area which occupied a portion of the judge's available time and energy. From time to time one of these two judges will become fully occupied after a week or more - with a divorce involving extensive testimony concerning custody or complicated issues of property distribution. If the other judge becomes ill, goes on holiday, or is drawn into a similarly complicated case, the calendar for all interest and purposes will be shut down.

The financial aspect of this problem cannot be ignored. Inevitably, the party with the ability to pay for extensive testimony by expert witnesses and to pay his/her attorney for unlimited trial work has an advantage in court proceedings. This Committee is concerned by the appearance that people of substantial means are able to tie up the resources and personnel of the Family Division of the Superior Court for days on end while those less well off must suffer the consequence of the congested calendar. In the Virginia and Maryland systems mentioned above the expense of the subjudicial personnel is borne by the parties, with the cost determined by the amount of time expended.

Recommendation: The Court Study Committee recommends that pending an increase in the number of judges in the domestic relations branch, procedures be instituted whereby at the request of the parties, hearing masters would hold preliminary hearings to make findings of fact and recommend disposition in contested domestic relations cases. Costs of such preliminary hearings would be borne by the parties except in *informa pauperis* cases. Either party can file exceptions to the findings. It is further urged that a committee be promptly appointed by the Superior Court leadership to work out the implementation of such system.

The calendar control function in the Superior Court Family Division is performed by the assignment commissioner and by the calendar control judge, each performing different though often related tasks. The calendar control function in some of the other Divisions of the Superior Court is performed principally by an assignment commissioner, with the judicial role being handled by either the motions judge or an arraignments judge as part of his other duties.

Interviews of Family Division judges and attorneys familiar with the operation of the calendar control process repeatedly noted the highly inefficient use of a judge's time in performing many, if not most of the duties this judicial position involves. The most frequently cited example is this regard was using scarce Family Division judicial to act on continuance requests when counsel for both parties concur in the request. These duties could be handled very competently by the Family Division Assignment Office. However, any meaningful delegation of the calendar control function to the

assignment commissioner must be accompanied by the full, active, and continuing support of the Family Division judges, for if attorneys find that the Court will not routinely support the actions of the Assignment Office, any judicial resource savings that might have been realized will be lost.

Recommendation: The Court Study Committee recommends that the Family Division Assignment Office be delegated the authority to grant agreed-upon continuances in contested domestic relations cases. Decisions regarding contested continuances and trial date advances should continue to be made by a judge.

Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court reevaluate the necessity for the Family Division Calendar Control Judge position. (The Court Study Committee has recommended in the Juvenile Delinquency and Child Neglect Report an extensive plan to dispose of cases far more expeditiously than is presently done. Were the Council of the District of Columbia and the Superior Court to adopt the major thrust of the Committee's recommendations in that area, it might be necessary to retain the calendar control judge to assure adherence to the speedy trial and case monitoring provisions.)

G. Family Division Judiciary

The Court Study Committee's Report on Juvenile Delinquency and Child Neglect addressed a number of judiciary-related issues which also apply to the Committee's concerns in the domestic relations, intra-family, adoptions and allied areas.

With respect to the length of time judges are or should be assigned to the Family Division, the Committee applauds Chief Judge Moultrie's efforts to lengthen divisional assignments beyond the earlier monthly rotation policy employed

by Chief Judge Harold Greene. The Committee recognizes the inherent problems in assigning individual judges to one area for an extended period. The evolving court philosophy of having judges remain within a Division of the Superior Court for periods of one year or even longer, with shorter assignments in specific areas like motions court, calendar control, judge-in-chambers, and others appears to be working well. The Committee would urge that this policy be instituted formally, allowing for longer judicial assignments of one to two years to the Divisions and longer assignments within Divisions; i.e., three months in Family Division motions court, three to six months on the contested domestic calendar, three to six months with juvenile cases, several months handling new referrals and calendar control. It would also appear that once a judge is assigned to a Division it would be useful to have judicial assignments within the Division made by the Administrative Judge of the Division. This individual has direct awareness of the current daily needs of both the division as well as of individual judges. In addition, there appears to be merit in overlapping Division assignments so that some judges are beginning their assignment in a division of the Superior Court while others are completing theirs, thus maintaining a steady balance of established expertise.

Recommendation: The Court Study Committee recommends that the Chief Judge continue judicial assignments to the Family Division at a minimum of three months, and consider lengthening them to one year or more. The Committee also recommends somewhat longer

rotations in particular assignments. The Committee also supports allowing the Administrative Judge of the Family Division to make assignments within the Division.

With regard to judicial training, the Committee's earlier Juvenile Delinquency and Child Neglect Report identified a variety of training issues which apply as well to the domestic relations, intra-family, paternity, adoptions and related matters. Further, virtually everyone -- on the bench and off -- with whom the Court Study Committee spoke in the domestic relations and related areas believed there was value in formal orientation and training for judges in the Superior Court Family Division. Judicial (and counsel) training is also needed in the adoptions field as much is happening nationally which bears review and consideration in the District of Columbia. (The Committee believes the D.C. Bar bears a principal obligation to develop training programs for lawyers who handle adoption cases.) There was not unanimous agreement as to the form the judicial orientation should take. In particular, it was felt that orientation was needed for a judge the first time he or she had a particular assignment in the Family Division, or when he or she was sitting in a particular assignment for the first time after a number of years away from that assignment. The Family Division Clerk's Office could play a useful coordinative role in orienting judges to particular assignments within the Division and in supporting any judicial continuing education initiative.

There was also almost unanimous agreement among those interviewed that there should be a benchbook for the Family Division, geared to the particular assignments within that Division. We understand that the Court is actively developing such a reference book in the juvenile delinquency area of the Family Division, and this initiative is to be commended. It does appear that the task is a greater one than could easily be done by judges in addition to their regular duties without additional professional help. The Committee supports the early development of such materials in other Family Division areas.

Recommendation: The Court Study Committee recommends that the Family Division prepare a thorough benchbook geared to each judicial assignment within the Family Division and provide for its regular updating. The Court should employ an outside consultant for this undertaking or assign professional staff to the task, with consultation, assistance, and advice from bar groups.

The Committee also concludes that its earlier stated recommendations regarding judicial training in the Family Division as set forth in the Juvenile Delinquency and Child Neglect Report are relevant to the other areas in the Family Division. The pertinent recommendation follows:

Recommendation: The Court Study Committee recommends that the Superior Court Board of Judges adopt a policy that each Division offer specific training to judges newly assigned to the Division and periodically throughout the judge's assignment to that Division. Staff and resources should be allocated to the orientation and training function of the Superior Court. Videotaped materials should be developed and equipment purchased to

permit their utilization for new judges and judges newly rotated into a division.

Related to the inservice training area is the issue of regular judicial staff meetings in the Family Division. This practice was begun at the initiative of Chief Judge Moultrie in 1978 and appears to have been very useful in keeping judges abreast of issues involving the Division. The Committee learned that since Family Division Administrative Judge Joyce Green resigned to accept an appointment on the federal bench the practice of weekly Family Division judges' meetings has not been continued. By all accounts this forum worked well and served a useful purpose, and we would urge Chief Judge Moultrie to encourage the continuation of regular Family Division judges' meetings.

H. Information and Referral Services

The Court Study Committee investigation revealed that many people are summoned to court who lack an attorney and are ineligible for pro bono legal services. These people often need the advice of someone before they become involved in often serious proceedings. Examples cited to the Committee included defendants in intra-family proceedings, either party in an uncontested pro se divorce proceeding, plaintiffs in support enforcement case, and others. The California domestic relations court forms mentioned earlier in this report are illustrative of the kind of easily understandable materials which would aid all parties to court proceedings.

Recommendation: The Court Study Committee recommends that an office be organized to provide daily advice and referral service for people summoned to court on the support, parentage and intrafamily calendars of the domestic relations branch of the D. C. Superior Court. The office would be similar to one in the Landlord-Tenant Branch of the District of Columbia Superior Court Civil Division.

SECTION III ADOPTIONS

Judicial proceedings involving adoption in the District of Columbia are lodged in the Domestic Relations Branch of the Superior Court Family Division. The Court's workload in the adoptions area has been relatively constant for the past five years, with an average of 369 cases filed annually and 365 cases disposed annually by the Court.¹³

Petitions for adoption are filed with the Court by the individual seeking to adopt the child. The D.C. Department of Human Services (DHS), private child-placing (adoption) agencies, or other private parties may also be involved. The large majority of adoption petitions involve step-parents or other relatives.

The procedures for most uncontested adoptions which constitute the overwhelming majority of the caseload - include the following steps: petition for adoption filed with Family Division adoption clerk; order or reference issued calling for an investigation, written report, and

¹³ Data compiled from D.C. Court System Annual Report, 1979, Table 29, p. 66, using 1975-1979 statistics inclusive.

recommendation regarding the petition for adoption to be made to the Court within 90 days; after the filing of the investigation report, the judge-in-chambers issues an interlocutory decree granting temporary custody generally four to six weeks later;¹⁴ this interlocutory decree automatically becomes the final adoption decree after a time period of 6 months to a year specified by the Court. Contested adoptions, which account for only a small percentage of the Court adoption workload, may involve several additional steps, such as issuing show-cause orders to the party contesting the proceeding; holding formal court hearings on the petition for adoption; and other related activities.

Interviews conducted by the Court Study Committee in the adoption area produced very positive comments about the staff of the Court's adoption office. Attorneys interviewed noted the high degree of competency, experience, and professionalism of Mr. John Klein, the Adoption's Clerk, and his assistant Mrs. Saunders. Repeated note was made of how smoothly that office functions and of the helpful assistance the staff provides. Attorneys familiar with adoption proceedings throughout the Washington Metropolitan Area commented in the regard that the D.C. Superior Court functioned more effectively and with greater consistency in this area than is

¹⁴ Whittier, op. cit. (adoption description, Family Division).

generally the case in the other jurisdictions. The Committee commends the Family Division Clerk's office adoptions staff and the judge-in-chambers unit for their overall effectiveness in this important area.

Issues identified by the Court Study Committee in the adoption area include: improving court oversight of private placement adoptions; developing criteria for when counsel should be appointed to represent the child; improving the timing and procedures of court actions for interlocutory decrees; re-activating the D.C. Government's Executive Branch Committee on Adoption Regulations; eliminating the Vital Records Office delays in processing birth certificates; and statutory reform of the birthfather rights in adoption matters.

A. Court Oversight of Private Adoptions

Of the three sources of adoption petitions, those filed by private parties acting independently of licensed child-placement agencies represent the smallest segment of the Superior Court's adoption intake. These private placement petitions seek to place the child with other blood relatives, or may arise through the initiative of lawyers, doctors, ministers, or others who may come into contact with partys seeking to adopt or a party wishing to have their child placed for adoption. The concern expressed by some interviewees in this area related to the potential, under the present procedure of parties in an adoption proceeding literally engaging in the sale or purchase of a child. In such instances, the

Court unknowingly would be abetting this process by approving the adoption without inquiring as to the nature of the contact between adoptive parents and the biological parents.

Serious consideration should be given by the Superior Court and/or the D.C. Council to requiring that before a private placement adoption can be decreed, a properly conducted independent home study investigation and report would have to be conducted and filed with the Court. While there may be occasional instances in private placement adoptions where an independent home study should be waived by the Court, the important role the Court plays in the adoption process reinforces the need the judge has for a thorough independent home study report before making these decisions.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adoption rules be amended so as to provide for an independent home study and report cases where a licensed child-placing agency or the Department of Human Services is not involved. Should the Court waive the order of reference - independent home study requirement - the Committee believes that the Court rules should require that an affidavit be submitted stating in detail how contact was made between the prospective adoptive parents and parties representing the adoptee. If the filing appears irregular in any way the adoption clerk should refer the matter with appropriate recommendations to the judge-in-chambers for action.

B. Appointment of Counsel

Under normal operating procedures, judicial decision in adoption cases are made by the judge-in-chambers. Judges rotate through this office on a monthly basis, so that

the primary court continuity over time is the Family Division adoption clerk.

As with other areas in the Superior Court, interviews conducted by the Court Study Committee revealed a lack of consistency among the judges with respect to the criteria used in making the appointment of counsel decision. In the adoption area, it is presumed in most instances that the adoptive child's interests are being protected by the private adoption agency, by the Department of Human Services or through the independent investigation and recommendation report prepared for Court use in most adoption cases. Attorneys interviewed by the Committee however did note instances where the interests of the child may not have been adequately represented before the Court, such as, for example, where adoption agency or Department of Human Services policies or rules may be in conflict with the best interests of the child, or where the child is older and able to play a more active role in the decision process, or where the proceeding is contested in some material manner. In such situations, it may be appropriate for the Court to appoint independent counsel to represent the interests of the adoptive child.

Recommendation: The Court Study Committee recommends that the Family Division Rules or Benchbook include criteria to guide the Court in deciding whether to appoint counsel for the adoptive child in judicial proceedings relating to the adoption decision with reference to Court proceedings involving the adoptive child. Criteria such as those set forth in the text of the Report should be considered.

A related issue concerns compensation for appointed Counsel. Currently when the Court appoints independent counsel for the child either the attorney is not compensated or the Court attempts to assess this cost to one of the other parties in the case. There is no clear statutory provision or source of appropriated funds to defray these expenses.

The Committee notes that adoption filing fees are low in Superior Court compared to other jurisdictions in the Washington Metropolitan area.¹⁵ The Committee also notes that counsel on occasion are appointed by the Court in adoption cases to represent parties other than the child, and that in appropriate instances such representation should be compensated.

Recommendation: The Court Study Committee recommends that the Superior Court leadership and/or the District of Columbia Council explore means whereby counsel appointed by the Court in adoption proceedings might be compensated.

C. Improving Timing and Procedures Regarding Interlocutory Decrees

As noted above, the D.C. Code provides that an investigation report be filed with the Court within 90 days of the order of reference being executed. The Whittier Court Delay materials noted that these reports are filed on the

¹⁵ The Superior Court adoption filing fee is \$5, whereas this fee is \$60 in the suburban Maryland Courts.

average 96 days after the adoption petition is filed.¹⁶ From the date the adoptions investigation report is filed with the Court until the interlocutory decree or the final decree is signed takes another four weeks on the average.¹⁷ Some attorneys who practice frequently before the Superior Court noted that 4 to 6 weeks was the average time adoption cases take for this stage of the proceeding. Specific mention was made by several persons interviewed as to the anxiety created in the prospective adoptive parents by the additional four to six week processing period before notification of Court action is received.

Recommendation: The Court Study Committee recommends that the Family Division Clerk review the internal court procedures leading to the issuance of the interlocutory adoption decree with the objective of reducing the period between the receipt of the investigation report and Court action. If for workload or other reasons the time period cannot be shortened, notice should be sent to the parties by the adoption clerk explaining what the customary processing time is in such cases.

In a related area, note was made of a practice used in some of the Maryland courts in which judges conduct an informal "signing ceremony" in chambers, of the interlocutory decree or the final decree. This procedure though not universally required or desirable does have the potential benefit of

¹⁶ Whittier, op. cit. (Adoption Statistics, Family Division).

¹⁷ Ibid.

humanizing the court's role in the formal adoption process, and should be considered by judges in the Superior Court and perhaps noted in the adoptions section of the Family Division Bench book under development.

Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge initiate a Divisional procedure whereby adoptive parents may appear upon request before the bench or in-chambers to witness the Court's approval of an adoption decree.

A final procedural area in the interlocutory decree subject concerns the length of time before the adoption decree is final. The thrust of the D.C. Code is that a child must reside with the adoptive parents(s) not less than six months before the adoption decree is final. While the adoptive parent(s) naturally may wish to have the action made final promptly, the Committee believes the six month period is fair given the serious nature of the action.

One problem in the length of time the interlocutory decree is in effect comes about because some well-meaning Superior Court judges delay the effective day of the final decree beyond the six month period for no over-riding purpose. One Superior Court judge, for example, the Committee was informed made a practice of having the final adoption decree effective on the birth date of the child. While the action is a positive gesture, the unnecessary anxiety created on the part of the adoptive parents waiting for the adoption to be final, the Committee believes, outweighs any positive benefit of delaying the effective date.

Recommendation: The Court Study Committee recommends that Interlocutory Adoption Decrees not extend beyond six months unless there the Court finds there is a specific reason in an individual case.

D. Re-Activating the D.C. Government Committee on Regulations

Historically the D.C. Government Executive Branch Committee on Regulations has prepared and promulgated a highly useful Manual on Adoption Procedures. To the Court Study Committee's knowledge this document has not been revised or reissued since October, 1969. The Committee also understands that for all intents and purposes the D.C. Government Committee on Regulations no longer exists, despite the continuing need in the adoptions area for oversight, coordination, and standards promulgation on a District-wide basis.

In a related area, the Court Study Committee learned that despite legislative requirements, the D.C. Government has failed to issue new licenses for private adoption agencies operating in the District of Columbia for the past year or more. The D.C. Code requires that private child-placing agencies be licensed, but despite requests by these agencies, the District Government has allowed these agencies' licenses to lapse.

Recommendation: The Court Study Committee recommends that the Mayor of the District of Columbia promptly reactivate the Committee on Regulations or other similar appropriate forum, and that such group concern itself with revising and reissuing the earlier Manual on Adoptions promptly.

Recommendation: The Court Study Committee recommends that the Director of the Department of Human Services promptly undertake the licensing process for each child-placing agency operating in the District of Columbia and institute procedures to keep such licenses current.

E. Vital Records Office

When the Superior Court issues an adoption decree, one copy of the order goes to the D.C. Government's Vital Record's Office for issuance of a new birth certificate. According to interviews conducted by the Committee it can take from several months to more than a year before the new birth certificate is issued. This processing delay is contrasted with the performance of the Vital Record's Office some years ago where even with a heavy workload new birth certificates were issued within a week or two of receipt of the court order. One explanation of the serious processing problem in the Vital Records Office is that a number of positions in that office have been eliminated as a result of overall city budgetary problems.

Recommendation: The Court Study Committee recommends that the District of Columbia Vital Record certificate processing standards be modified so that affected parties will not be forced to wait more than 30 days before receiving birth certificates. The appropriate division of the D.C. Bar should consider bringing this matter to the attention of the Mayor, and/or the D.C. Council so that budgetary relief or other necessary assistance may be provided if warranted to the Vital Records Office.

F. Birthfathers Rights in
Adoption Proceedings

A number of the interviews conducted by the Court Study Committee identified the legal rights of the birthfather as a growing area of concern in adoption proceedings. Currently the D.C. Code provides some guidance as to instances where the consents of both parents are not required. The Committee notes that whether the father is locatable or even known should be given greater weight in the D.C. Code than is currently the case.

The Court Study Committee observes that a number of important U.S. Supreme Court decisions in the birthfather rights area may also foster an early re-examination and amendment of pertinent sections of the D.C. Code.¹⁸

Recommendation: The Court Study Committee recommends that the appropriate division of the D.C. Bar consider the need for amended statutory language in the birthfather rights and notice area of of adoption proceedings.

¹⁸ Stanley v. Illinois, Cabein v. Mohammed, Lalli v. Lalli, and Quillan v. Walcott.

SECTION IV INTRA-FAMILY PROCEEDINGS

The Intra-Family Branch of the Family Division of the D. C. Superior Court hears all cases under the provisions of the 1970 D.C. Court Reform Act (16 D.C. Code, Sections 16-1001 et seq.). This statute authorizes the Corporation Counsel to obtain civil protection orders for victims of family abuse. The vast majority are cases of abuse by husband against wife, or male lover against female lover -- and for that reason alone the Court Study Committee in this section will generally refer to the victim as "she" and the abuser as "he." Protection orders may also be sought under this Act to protect people living in the same household, in cases such as abuse of a parent by an adult child or abuse between unmarried adult members of the household. Cases of abuse and neglect of children are also heard in the Intra-Family Branch but under procedures pursuant to a separate D.C. Prevention of Child Abuse and Neglect Act of 1977 governing child neglect. Cases of that type are discussed in the Court Study Committee's separate Report on Juvenile and Child Neglect.

An "intra-family offense" for which a civil protection order may be granted is a criminal act committed by one spouse against the other or by one person against another person in the same household. (16 D.C. Code, Sections 16-1001 et seq.) By definition, there are two possible remedies available for the same incident -- one civil and one criminal. Under the existing prosecutorial system of the District of

Columbia the United States Attorney's Office is responsible for all adult criminal prosecutions, including prosecuting so-called family abuse cases. The Corporation Counsel of the District of Columbia Government is responsible for obtaining civil protection orders and temporary protection orders for citizens entitled to them. There is, at present, no private right of action for a civil protection order, meaning that only the U.S. Attorney or the Office of the Corporation Counsel can bring these matters before the Court. Further, the Act provides that the U.S. Attorney is to notify the Director of the Superior Court Social Service Division when a criminal complaint is made on an intra-family offense. As a result, the Social Service Division is also involved in these cases.

A. The Citizen's Complaint Center

Coordination among the three agencies -- the U.S. Attorney, the Corporation Counsel and the Superior Court Social Service Division -- is facilitated through the existence of the Citizen's Complaint Center, which serves as the point of intake for intra-family offenses for these three agencies. In addition to the approximately 2,000 intra-family cases filed each year by citizens coming to the Citizen's Complaint Center, some 7,000 other cases are handled by the Center. Most of these are minor misdemeanor offenses in which police have not made an arrest on the basis of a complaint at the scene of a crime, and are generally between people who know each other such as fellow employees, neighbors, landlords and tenants, boy friends and girl friends. The focus within this

section of the Family Division Report is on the handling of intra-family offense cases and those cases involving lovers, boy friend and girl friend, and former spouses or lovers rather than on the other case types handled by the Citizen's Complaint Center.

The Citizen's Complaint Center screens cases for issuance of criminal warrants and civil protection orders and for referral to various community resources for battered women. Mediation services for out-of-court dispute resolution are also an integral part of the Center and are used for a growing number of cases susceptible to this form of disposition, including both intra-family cases and other case types.

The Citizen's Complaint Center is staffed by employees of the U. S. Attorney's Office, the Office of the Corporation Counsel and the Superior Court Social Service Division, and trained volunteer case "screeners" and "mediators." It is coordinated by employees of a non-profit organization, the Center for Community Justice. The reputation and effectiveness of the Citizen's Complaint Center appear to have improved dramatically since the Center for Community Justice began its coordination function in September 1978, funded initially by a grant from the Law Enforcement Assistance Administration, Office of Criminal Justice Plans and Analysis, the Eugene and Agnes Meyer Foundation and The D.C. Bar Foundation. The staff of the Center for Community Justice operates by persuasion rather than with line authority over the agencies involved.

Nonetheless, their role appears to have been crucial, particularly because of the overlapping statutory responsibility of the U.S. Attorney's Office and the Office of the Corporation Counsel, which in the past has often led to lack of coordination and poor service to the public.

A major legislative proposal was formulated by the Executive Branch of the District of Columbia Government in September 1979 to localize the prosecution of all local laws through the creation of an Office of the Attorney General for the District of Columbia. Included within this far reaching proposal was the transfer of the Citizen's Complaint Center function to this new organizational entity. Locating the intra-family offense intake function within a unified and integrated local prosecutor's office would conceivably improve communication and may lessen the need for a third party, such as the Center for Community Justice, to serve the coordination function so essential under the present dual prosecution operation.

One of the most important justifications for statutorily consolidating all local law enforcement in a single District of Columbia agency, in terms of the intra-family area, is that it would lessen the likelihood of worthy complaints by citizens of this community not being prosecuted either criminally or civilly. Currently there exists a close working relationship between the Office of the U.S. Attorney

- 100 -

and the District of Columbia Government's Office of the Corporation Counsel regarding the operation of the Citizen's Complaint Center. Interviews conducted by the Court System Study Committee did reveal however the inordinate amount of time and energy involved for all concerned to make this arrangement viable, and more directly to assure that cases of merit receive the timely handling.

While several bills have been introduced no legislative action has been taken regarding the Mayor's proposal to localize all law enforcement within the District Government, and it appears that such approval may be some time coming, even though this legislative reform would most likely improve the handling of the intra-family area within the District of Columbia. Until this major legislative action takes place, and perhaps beyond, the Court Study Committee believes that the continued existence of a Citizen's Complaint Center coordinator functioning outside but with the three line agencies is important. The Court Study Committee commends the Corporation Counsel, the Mayor and the D. C. Council for its recent decision to continue this function in an outside organization, the Center for Community Justice, through appropriation support to the Office of the Corporation Counsel.

Recommendation: The Court Study Committee recommends that the Citizen's Complaint Center continue to function as an intake and referral agency in cases of intra-family violence. The Committee commends the leadership of the D.C. Courts, the Office of the Corporation Counsel, and the Office of the U.S. Attorney for their active support and use of the Complaint Center.

Recommendation: The Court Study Committee recommends that the D. C. Code be amended to provide that responsibility for both criminal and civil prosecution of intra-family offenses be consolidated in one prosecutorial entity. The Citizen's Complaint Center should continue to be coordinated by a "neutral" organization not a part of the U.S. Attorney's Office, the Office of the Corporation Counsel, or the Superior Court Social Service Division.

Citizens come to the Citizen's Complaint Center to make criminal complaints or to seek civil protection orders on the basis of self referrals, referrals by D. C. Police Department or referrals by private lawyers or other groups or agencies. Police referrals to the Citizen's Complaint Center are generally cases in which the police officer has not made an arrest after responding to a call for assistance received by the police.

When a potential complainant enters the Citizen's Complaint Center an initial screening is conducted by a volunteer screener or student intern, supervised by one of three U. S. Attorney's Office paralegals. The screener and the paralegal make a joint evaluation of the case, deciding whether to recommend criminal prosecution, a civil protection order, or some other remedy such as mediation or sending a warning letter to the party who is the object of the complaint. In addition to discussing the possible remedies with the alleged

victim, the screeners discuss the victim's situation and may assist the victim by referral to other agencies such as public assistance, or may obtain police assistance for the victim to pick up her personal possessions, or may refer her to a shelter or other source of help. The Mediation Service, established in October 1979, schedules 40 mediation hearings a week. Eighty-four community volunteers who have received 56 hours of training in mediation techniques from the Center for Community Justice serve as the core of the Mediation Service. The volunteer mediators assist disputants in developing written agreements, settling a wide variety of inter-personal problems including child visitation and support, property division, and future relations between the parties. Between January and December 1980 the Mediation Service settled more than 750 disputes. Routine follow-up on each case mediated reveals that 86% of the agreements were being adhered to wholly or substantially, and 93% of the disputants were satisfied with the results of the mediation hearing.

Intra-family offense cases are also referred to a Court Social Service Division social worker for a social service evaluation when a complaint is filed or an arrest is made because the intra-family offense statute suggests consideration by the Director of Social Services even if the case is to be prosecuted. Intra-family cases which are felt to warrant criminal prosecution based on U.S. Attorney guidelines are flagged and either handled by an Assistant United States

Attorney assigned to the Citizen's Complaint Center, or the complainant is sent directly to the regular papering desk of the U.S. Attorney's Office located in the main D.C. Courthouse. In either event prosecution must be authorized by a "reviewing assistant" as well as the initial Assistant U.S. Attorney who first deals with the case. The social worker also refers those intra-family offense cases to the Corporation Counsel for action which the U.S. Attorney declines to prosecute but which are eligible for civil protection orders and in which the complainant asks for one.

B. The office of the United States Attorney

At present about 20 to 25 cases per month are referred from the Citizen's Complaint Center to the U.S. Attorney with a recommendation for prosecution. Many of these cases do not meet the statutory criteria for intra-family offenses but, rather, are misdemeanor assault cases involving neighbors, coworkers, boyfriends, girlfriends, ex-boyfriends and girlfriends and the like. At present, according to Complaint Center staff, there are no statistics available from the U.S. Attorney's Office on the disposition of these cases. It is uncertain whether they are prosecuted or "wash out" for one of several reasons along the way. Further, there is no clear procedure in the U.S. Attorney's Office for referring cases not prosecuted back to the Citizen's Complaint Center for handling. Cases involving weapons, repeated threats or serious injuries, in the view of the Court Study Committee, should not be totally dropped but rather sent back to the Complaint Center so that

the possible remedies of civil protection orders, mediation and further community referral could be made.

An unknown number of intra-family offense cases, and cases involving lovers or ex-spouses not covered by the intra-family offense section of the Court Reform Act, are brought by the police directly to the regular "papering desk" of the U.S. Attorney's Office rather than to the Citizen's Complaint Center. So far as the Committee was able to determine, no statistics are kept on the number and disposition of such cases. There appears to be no regular coordination with the Citizen's Complaint Center and the Office of the U.S. Attorney of cases not accepted for prosecution to insure that these victims are also provided with the services of the Center such as referral to community agencies. Ideally, these cases would be identified and the paralegals and the Court Social Service staff at the Citizen's Complaint Center used to provide an initial victim assistance function.

The Court Study Committee urges the U.S. Attorney to regularly seek "special orders" as conditions of release in non-statutory criminal cases of the kind described above, particularly in ex-boyfriend and girlfriend cases. These "special orders" might include an order to the abuser to move from the family home, or an order regulating the terms of visitation with children of the parties, or contact with the victim. Where appropriate, the U. S. Attorney should also

refer the case to the Corporation Counsel for a civil protection order. (The statute allows duplicate remedies so long as the criminal charges are filed prior to taking evidence on the civil protection order case.)

The U.S. Attorney's Office also offers "U.S. Attorney hearings" to victims of domestic violence. Ostensibly the purpose of these hearings is to determine whether probable cause exists to prosecute the abuser or to warn the abuser. These hearings are sometimes conducted by Assistant United States Attorneys and sometimes conducted by paralegals employed by the U.S. Attorney's Office, and are attended by the complainant and abuser. The alleged abuser usually is not represented by counsel. Miranda warnings are not regularly given in these cases. In any event, the Court Study Committee is concerned that questioning of an unrepresented defendant during the time when a criminal complaint may be filed raises substantial Fifth Amendment problems and, may hinder further prosecution of the defendant if the Assistant U.S. Attorney does determine there is probable cause to prosecute.

While there may be some value in an admonition to the defendant by an Assistant U.S. Attorney when the prosecutor chooses not to prosecute, it does not appear to the Committee to be a prudent use of U.S. Attorney resources to hold such hearings. The time might better be used in actual prosecutions, with the warning letters sent as admonitions. The present availability of the voluntary mediation service at the

- 106 -

Citizen's Complaint Center provides an effective dispositional alternative for those cases not warranting criminal prosecution or a civil protection order.

In intra-family offense cases both civil protection orders and mediation are available dispositional remedies. In cases not meeting the strict intra-family eligibility definitions of the D.C. Code (ex-spouses and lovers not presently living together), voluntary mediation is available in addition to criminal prosecution.

The U.S. Attorney and the Corporation Counsel are to be commended for regularly stationing attorneys in the Citizen's Complaint Center. The Center for Community Justice and the U.S. Attorney's Office are also to be commended for the creative use of student interns as screeners at a low cost to the public. The long-standing support and understanding of the D.C. Courts' leadership of the purposes and work of the Citizen's Complaint Center is also noted, and is commendable. As a result of these and other changes in the past several years, the typical wait for a complainant at the Citizen's Complaint Center before being assisted has been reduced from as long as four hours several years ago, to an average of twenty minutes.

Recommendation: The Court Study Committee recommends that the mediation service of the Citizen's Complaint Center be retained and expanded as required to meet the demand for service.

Recommendation: The Court Study Committee recommends that the United States Attorney's Office develop and maintain statistics on the disposition of cases referred for prosecution by the Citizen's Complaint Center.

- 107 -

Statistics on the disposition of cases of intra-family violence (including lovers and ex-spouses) which come directly through the U.S. Attorney's Office papering desk rather than the Citizen's Complaint Center should also be developed and maintained.

Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office extend their existing victim-witness assistance capability to those complainants whose intra-family cases are referred to the U.S. Attorney for papering. This function should include the following: maintaining contact with the victim, referring the victim to the Citizen's Complaint Center if the case "washes out" or if further referrals are needed; and advising the Assistant U.S. Attorney handling the case of the need for special protective orders.

Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office cease using its scarce resources for informal "probable cause" hearings by Assistant U.S. Attorneys and paralegals at the Citizen's Complaint Center. A warning letter should be sent to the alleged abuser if the victim wishes, and she should be offered mediation services and civil protection orders as needed.

Recommendation: The Court Study Committee recommends that all initial decision to decline prosecution of intra-family cases be subject to review at a supervisory level in the U.S. Attorney's Office.

Recommendation: The Court Study Committee recommends that the U.S. Attorney and the Corporation Counsel continue to station an attorney at the Citizens Complaint Center full time.

Temporary Protection Orders

Interviews and an examination of relevant data indicate that the Office of the Corporation Counsel seeks intra-family related temporary protection orders (emergency

orders) in only the most extraordinary cases. In 1978 a total of 16 temporary protection petitions were filed and 15 orders obtained for victims of domestic violence. In 1979 the totals were 12 and 12. It appears to be the position of the Corporation Counsel that a better use of their limited resources is to seek the more permanent civil protection order which, if granted, is good for one year, than to do an equivalent amount of work for a temporary protection order, which is valid for only ten days. Further, interviews with staff of the Complaint Center and the Office of the Corporation Counsel reveal the position that if the case is serious enough to warrant a temporary protection order the case should be prosecuted criminally by the U.S. Attorney's Office and not handled civilly by the Corporation Counsel. The Court Study Committee believes that the Corporation Counsel's Office is avoiding their responsibility under the statute by failing to obtain temporary protection orders in these serious cases, whether the U.S. Attorney prosecutes or not.

The Court Social Services Division social staff at the Citizen's Complaint Center, knowing of the relatively low prosecutorial priority the Corporation Counsel has given temporary protection orders, frequently refers victims of intra-family type violence who have problems of an emergency nature to the Women's Legal Defense Fund Emergency Domestic Relations Project, or to the Family Abuse Project at Catholic University Legal Clinic for help in obtaining a temporary restraining

order (TRO) instead of a temporary protection order (TPO). However, this, too, is an unsatisfactory option primarily because there is a much higher standard of proof for a TRO than a TPO. In TRO cases brought by an attorney other than the Office of Corporation Counsel there must be an underlying cause of action for divorce, legal separation or custody in order for a motion for a temporary restraining order to be made. There is no requirement for such an underlying cause of action with the temporary protection order available through the Corporation Counsel's Office. Additionally, the burden of proof is much more difficult for a temporary restraining order than it is for a temporary protection order. For example, to obtain a temporary restraining order the complainant must show:

- (a) likelihood of irreparable harm;
- (b) that the order will maintain the status quo;
- (c) that the order is in the public interest;
- (d) that there is a likelihood of winning the underlying cause of action; and
- (e) that the order will cause less harm to the defendant than benefit to the complainant.

To obtain a temporary protection order, however, the Corporation Counsel need merely prove that the safety or welfare of a family member is immediately endangered by the respondent, a

much easier burden of proof to meet, (16 D.C. Code, Section 16-1004).¹⁸

As an example of the statutory constraints in obtaining temporary restraining orders, only one of 25 serious intra-family cases recently referred to the Catholic Law School Clinic Family Abuse Project was prosecutable as a TRO. Attorneys at the Clinic believed all 25 cases could have been prosecuted as temporary protection orders.

The amount of paperwork required to obtain a temporary restraining order is vastly more cumbersome than that required for obtaining a temporary protection order, and includes filing a complaint, a summons, a motion for the temporary restraining order, points and authorities, an affidavit, and preparing an order. In comparison, the temporary protection order requires the preparation of a petition and a motion.

¹⁸ Temporary protection order cases are processed within the D.C. Superior Court by the Judge-in-Chambers. That office handles a wide variety of matters ranging from acting on adoption orders, to approving payment vouchers for attorneys under the Criminal Justice Act. When the Corporation Counsel files a temporary protection order with the Judge-in-Chambers a several hour wait may ensue before the matter is heard by the Judge. A better procedure might be for the Court to either give the Corporation Counsel a time certain appointment for considering these matters, or to allow the Corporation Counsel to be "on-call," appearing at the Judge-in-Chambers with whatever witnesses are appropriate in the given case, within 30 minutes of being called. This minor administrative change by the office of the Judge-in-Chambers would assure the optimum utilization of Corporation Counsel resources with little adverse effect on the Court's scheduling flexibility in the Judge-in-Chambers.

- 111 -

The point of the above discussion is to illustrate how cumbersome the existing statutory and procedural mechanisms are for getting relief for victims of intra-family offenses. It must be noted again that the long-standing absence of adequate support staff and related resources in the Office of the Corporation Counsel has contributed to their policy of not emphasizing the prosecution of temporary protection orders. Thus, it has often become necessary to provide these emergency legal services with private rather than public funding, using very cumbersome and inept procedures.

The Court Study Committee favors amending the existing intra-family offense statute to permit a private right of action in temporary Protection Order matters.

Recommendation: The Court Study Committee recommends that the Corporation Counsel seek temporary protection orders in all cases in which the victim requests one and the statutory standards are met. Such action should be taken even if, in the opinion of the Corporation Counsel's Office, criminal prosecution would be more suitable. Additional staff should be hired by the Corporation Counsel's Office to make this undertaking possible if that is required.

Recommendation: The Court Study Committee recommends that the Clerk of the D.C. Superior Court work with the Office of the Corporation Counsel to improve the scheduling procedures in the Judge-in-Chambers Office for considering intra-family offense temporary protection orders.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division Administrative Judge, in consultation with the Corporation Counsel, the Center for Community Justice, the family law bar, and others, study the feasibility of having

- 112 -

temporary protection orders issued by a Family Division Hearing Commissioner. If it is determined that this change would be desirable, appropriate changes and legislative authorization should be sought if required.

C. Backlog and Service Problems in the Office of the Corporation Counsel

In 1979, 1,962 complainants sought assistance from the Corporation Counsel at the Citizen's Complaint Center. In 668, or 34%, of the cases, the Corporation Counsel filed petitions for civil protection orders, and in 295 of these cases -- or 55% of those where petitions were filed -- civil protection orders were issued by the Court. The Superior Court issued 78 contempt motions in intra-family cases in 1979.

Statistical trends in the civil protection order area as reported by the Office of the Corporation Counsel²⁸ appear below.

	<u>CPO</u>		<u>TPO</u>	
	<u>Petitions</u>	<u>Orders</u>	<u>Petitions</u>	<u>Orders</u>
1978	693	318	16	15
1979	810	410	12	12
1980	724	321	9	8

The reasons the Corporation Counsel does not file petitions in the approximately 66% of the intra-family cases coming to the Citizen's Complaint Center are not entirely clear. Some complainants decline to cooperate in filing the case and may refuse to appear in court. (In the majority of

²⁸ July 1, 1981 phone conversation with Margaret Hines, Chief, Special Litigation, Office of the Corporation Counsel.

intra-family cases where a civil protection order petition is not filed, a warning letter is sent to the alleged abuser by the Corporation Counsel.) In other instances the matter may be referred for voluntary mediation services available at the Citizen's Complaint Center. While use of warning letters and/or referral to mediation services for some intra-family cases is warranted, the Court Study Committee believes that a petition should be filed in each case where the victim wants a petition to be filed and the statutory standards for a civil protection order are met.

In the average civil protection order case, the case is not heard by the Superior Court for four weeks to two months after the incident of violence occurs and the complaint is filed at the Citizen's Complaint Center. All but ten days to two weeks of this period is attributable to the Corporation Counsel's Office. The Special Litigation Section of the Corporation Counsel's Office handles both paternity and child support cases, which are seriously backlogged, in addition to intra-family/civil protection order cases. The nine attorneys in this Section are reported to have an insufficient number of support staff to process the work expeditiously. It is often several weeks after the complainant visits the Citizen's Complaint Center before the necessary petition is typed for filing. There is a constant shifting of work priorities by the Special Litigation Section between the child support work and the intra-family work with the result that insufficient priority is given to each.

- 114 -

Recommendation: The Court Study Committee recommends that the Corporation Counsel seek civil protection orders in each case in which the victim of abuse wants a civil protection order and the statutory standards for a civil protection order are met. The D. C. Council should authorize additional support staff for the Special Litigation Unit of the Office of the Corporation Counsel to include, at a minimum, one additional secretary.

The Court Study Committee further recommends that the Corporation Counsel set processing goals in C.P.O. cases to include having petitions filed with the Court within 24 hours of the time the complainant comes to the Citizen's Complaint Center.

On a preceding page data were presented indicating that the Superior Court Family Division issued civil protection orders in 44% of the intra-family cases brought before it. In the majority of cases filed where the petitions were not acted upon the primary reason was failure to serve the defendant. The Superior Court Intra-Family Rules require personal service of notice of the hearing. All service in these cases is done by the U.S. Marshal's Office. The Marshal's service of summons and complaints in the civil protection order cases is seriously inadequate. Court Rules provide a month to serve notice on the defendant and, as noted above, in at least half the cases notice is not served. Budgetary constraints and provisions of the collective bargaining agreement limits employee overtime, and in turn makes it possible for the U.S. Marshal's Service to handle the service of process function only during regular business hours. Additionally, the information the complainant furnishes the Corporation Counsel's Office on the service of process forms often does not include the work address and

other addresses at which the defendant might be served during the day.

The U.S. Marshal's Service gives priority to handling criminal cases, with intra-family cases somewhere lower on the priority list. It should be noted that there have been many instances where a Marshal takes a particular interest in a given case and, through special effort often on their own time, serves the papers. Inadequate service of process is one of the greatest difficulties in the handling of intra-family offense cases.

The Superior Court's existing intra-family service of process rules are among the most restrictive in the Court. They require personal service before Court action can be taken in most instances.

Some imaginative steps have been taken to compensate for the restrictive statutory/rules regarding service of process. The Office of the Corporation Counsel for example, sends a copy of the intra-family summons to the defendant by normal mail. This procedure has assisted in bringing many defendants to Court on the basis of this information where they can then be served at the hearing or agree to appear voluntarily, thus avoiding the service problem. The Corporation Counsel or others might also consider telephoning respondents notifying/asking them to appear.

The Corporation Counsel also informs the complainant through a letter that a civil protection order is being sought

against a particular defendant by the complainant. Such official correspondence can be shared with the police should the need arise subsequently. It might be useful if the Corporation Counsel would inform the police by mail of this action. The Committee would urge that a copy of this letter also be sent to the defendant and attached to the summons for service at the time he is served so that he can realize that the police are aware of the case and that any reprisal against the woman is likely to be treated harshly.

Recommendation: The Court Study Committee recommends that sufficient funds be appropriated for the Corporation Counsel to hire a special process server for the sole purpose of service of process in Civil protection order hearings. It is also recommended that complainants be urged to furnish the Office of Corporation Counsel full information, including both home and work addresses of the respondent, and telephone numbers of the complainant for use by the U.S. Marshal in effecting service of process. In addition to formal service or attempted service and mailing a copy of each summons, the Corporation Counsel should telephone the respondents and notify them to appear for the hearing.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel develop a procedure whereby all cases returned to files on the day of the scheduled CPO hearing are followed up, particularly those with defective service.

D. Court Scheduling

The Superior Court Family Division intra-family clerk's office generally sets 30 cases each Friday for hearing in motions court. It is not unusual for the Court to complete

- 117 -

the entire Friday motions calendar before lunch, largely due to the fact that of the 30 cases set for intra-family hearing half will not be heard because of failure to serve the defendant. The Court Study Committee believes the Court should alter the motions calendar so that all pending, mature intra-family cases can be heard within one week. Ideally, once service problems are resolved, cases should be scheduled so that the Court will hear and dispose of the case within two weeks of the initial complaint being filed.

Recommendation: The Court Study Committee recommends that the civil protection motions court calendar not be limited to 30 cases on any Friday. Cases should be placed immediately on the calendar, leaving only sufficient time for service. Once service of process difficulties are corrected, the Court should schedule civil protection order cases for hearing motions within ten work days of the date of filing.

Superior Court operating procedures provide that all civil protection order cases be heard in Family Division Motion Court on Fridays. Complainants are told to report to the Corporation Counsel's Office at the Courthouse at 8:30 a.m. In general, the Assistant Corporation Counsel (ACC) handling the case will call each plaintiff to the counter and spend five minutes talking to her about what will happen in court that morning. This is the only witness preparation that occurs in these cases. Some Assistant Corporation Counsels explain what will happen in court and some do not. The woman rarely understands Court procedure, what the protection order

- 118 -

will mean if granted in terms of what the order tells the man to do, or that she should file a copy of the order with the police, etc. Defendants also don't know what is going on. From Committee observation it appears that few petitioners or respondents are clearly aware that the Friday CPO hearings are not criminal proceedings. More informational materials are needed for parties in these cases.

The civil protection order forms themselves are not written in language a lay person can readily understand. They are not bilingual and do not provide such pertinent information as telling the victim to file a copy of the court order with the police, or informing the victim what to do in the event the court order is violated.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel assist in preparing and making readily available a booklet for petitioners and a booklet for defendants explaining what the civil protection order is, what it requires the defendants to do and how the petitioners may have it enforced if it is violated. The booklet should be in both English and Spanish.

Recommendation: The Court Study Committee recommends that the form of the Civil Protection Orders be rewritten in understandable prose and that it include a statement that "if there is a violation of this order, return to the Citizen's Complaint Center."

In the courtroom itself, the manner in which Court is conducted has a great impact on the seriousness with which the parties take the Judge's Civil Protection Order, if issued. The level of anxiety and tension can be greatly reduced by a

judge's patient explanation of what is going to happen. Segregating defendants and petitioners in the courtroom can avoid physical violence, which sometimes has erupted in the past. Keeping defendants in the courtroom long enough to allow the petitioner to leave the building also may be helpful in some situations to avoid physical violence. It also has been suggested in some interviews with the Committee that many judges need further understanding of the dynamics of family violence, and training on what they can do to do more effectively handle the courtroom process.

Recommendation: The Court Study Committee recommends that a Benchbook be developed for use of Family Division judges which provides in intra-family cases that:

- all defendants sit on one side of the courtroom and all plaintiffs on the other;
- at the beginning of the court session the daily courtroom procedures be explained to those assembled in the courtroom;
- the seriousness of the alleged offense be explained to the defendants;
- at the conclusion of the hearing the bailiff be instructed to immediately give a copy of the judge's order to the plaintiff and the defendant along with an explanation of what the order means;
- both plaintiff and defendant be given, before leaving the courtroom, a booklet describing procedures to follow in the event of a violation of the order, as well as outlining the consequences to parties in violation of the order;
- the defendant be required to remain in the courtroom for a sufficient length of time to allow the petitioner to leave the courthouse.

Recommendation: The Court Study Committee recommends that training be made available to Superior Court Family Division judges several times a year on family violence and on their legal authority in these cases. Professional resources such as psychologists should be on call if the judge has questions on family violence or other issues in the intra-family area during the course of his or her term in the Family Division.

E. Intra-Family Offense Statutory Reform

The Women's Legal Defense Fund, together with other community groups, has drafted proposed amendments to the Intra-Family Offense Section of the 1970 D. C. Court Reform Act (16 D.C. Code 1001 et seq.) which the Committee believes would greatly improve the coverage and effectiveness of the Act. We recommend that the D. C. Council amend the 1970 Act to generally address these areas. The major changes from the present law would be as follows:

(1) The kinds of acts which are considered intra-family offenses and on the basis of which a protection order may be issued are extended to include spousal rape and sexual assault and molesting and harassing, in addition to specific criminal offenses. While there may be some policy reasons for refusing to prosecute criminally in cases of marital rape, there is much less basis for a failure to issue a civil protection order to protect a spouse from this conduct.

(2) Coverage would be extended under the Act to all people who are related by blood or marriage, to those who currently or formerly shared a household or those who were in a close relationship.

This extends coverage of the Act to ex-spouses, ex-lovers, people who formerly lived together, boy friends and girl friends who may not have lived together, and to those in homosexual relationships. All of these are situations in which it is good to have available a protective device other than criminal prosecution.

(3) The amendments would create a private right of action to seek a temporary or civil protection order.

As noted earlier in the text, currently only the Corporation Counsel is authorized to seek such orders. While the responsibility of the Corporation Counsel should not be diminished in this area, the Committee can see no reason why those able to obtain their own counsel should not have this remedy available, particularly when the Corporation Counsel obtains so few temporary protection orders each year.

(4) The amendments clarify that both criminal and civil remedies would be available with respect to the same incident. The remedies provided are different, and often both are needed.

(5) Relief available in temporary and civil protection orders is extended and clarified to include, in addition to ordering a cessation of violence and threats giving the Court authority to enter:

- (a) orders of temporary custody and setting conditions of visitation with minor children;
- (b) orders of support of petitioner and minor children;

- (c) orders directing the respondent to refrain from property damage;
- (d) orders directing the the police to protect and assist petitioner;
- (e) orders directing the respondent to pay damages resulting from the abuse to petitioner, including suit money and attorney's fees;
- (f) orders directing the respondent to vacate the household where the petitioner resides without suspending in all cases an obligation to pay rent or mortgage payments;
- (g) orders directing the petitioner to pay for alternative housing for respondent.

The additional relief available under these amendments would make all the relief generally necessary available in a single court case without the necessity to file an additional court case, for example, for custody or support.

(6) Police are required to assist the victim of violence by such means as remaining on the scene, assisting the victim to get medical treatment, assisting the victim in removing personal possessions, giving transportation to safe housing.

(7) Police are authorized to arrest without a warrant, on the basis of probable cause for intra-family offenses and for violations of an existing protection order.

Recommendation: The Court Study Committee recommends that the D.C. Council substantively amend the Intra-Family Offense provisions of the 1970 D.C. Court Reform Act taking into serious consideration the proposals of the Women's Legal Defense Fund and other community groups.

Appendix A

Persons Interviewed

1. Sandy Ain, Esq.
practicing attorney
personal interview December 1978
2. Honorable Richard R. Atkinson
Retired Judge
D.C. Superior Court
personal interview April 25, 1979
3. Rita Bank, Esq.
Family Abuse Project, Columbus
Community Law Office
Catholic University
personal interview, May 30, 1979
telephone interviews November and December 1980
4. Honorable Sylvia Bacon
Associate Judge
D.C. Superior Court
personal interview May 8, 1979
5. Michael P. Bentzen, Esq.
personal interviews January 16, 1979, November 17, 1980
6. Morton Berg, Hearing Commissioner
Superior Court Family Division
personal interview April 25, 1979
7. Al Berling, Fiscal Officer
D.C. Courts
personal interview October 26, 1979
8. John Bischoff, former Clerk
Superior Court Family Division
personal interviews, June 2, 1978, June 8, 1978,
September 12, 1978, May 31, 1979
9. Honorable Samuel Block
Associate Judge
D.C. Superior Court
personal interview May 8, 1979
10. James Booth, Assignment Commissioner
Superior Court Family Division
group interview May 31, 1979
11. Kirk Bowdin
U.S. Marshal's Service
group interview, September 12, 1979
personal interview August 8, 1979

Appendix A

12. Jean Bower, Esq.
telephone interview November 3, 1980
13. Noel Brennan
Citizens' Complaint Center
personal interview April 12, 1979
14. Eugene Brown, Director
Child Support Enforcement Office
Department of Human Services
personal interview September 12, 1979
15. Dale Buttons, Esq.
personal interview November 13, 1989
16. Dr. Stanley Cohen
Director of Research
Association of Family Conciliation Courts
telephone interview August 27, 1980
17. Graham Clark
U.S. Marshal's Service
group interview September 12, 1979
18. Kenneth Crist, Finance Officer
D.C. Courts
personal interview October 26, 1979
19. Early Darnell, Supervisor
Superior Court Family Division
Clerk's Office
group interview May 31, 1979
20. Ms. Dubs
Barker Foundation
personal interview May 29, 1979
21. Honorable John D. Fauntleroy
Associate Judge
D.C. Superior Court
personal interview May 7, 1979
22. Harry Fulton, Esq.
Public Defender Service
personal interview January 19, 1979
23. James Gardiner, Chairman
Mental Health Commission
D.C. Superior Court
group interview, May 31, 1979
personal interview June 21, 1979

Appendix A

24. Ann Garfinkle, Esq.
practicing attorney
personal interview December 7, 1978
25. Honorable George Goodrich
Associate Judge
D.C. Superior Court
personal interview May 1, 1979
26. Honorable Joyce Green, former Administrative Judge
Superior Court Family Division
personal interview May 16, 1979
27. Elizabeth Guhring, Esq.
practicing attorney
personal interview December 13, 1978
28. Gerald Hall
Family Division Assignment Office
Superior Court
group interview May 31, 1979
29. Norma Jurnigan, Adoption Services
Department of Human Services
telephone interview November 14, 1978
30. Margaret Hines Esq. Chief
Special Litigation Unit
D.C. Corporation Counsel
personal interview December 14, 1979
31. Honorable Gladys Kessler
Associate Judge
D.C. Superior Court
personal interview April 27, 1979
32. Honorable Orm Ketcham
former Judge
D.C. Superior Court
personal interview April 26, 1979
33. Harold Keys, Supervisor
Family Division Domestic Relations Branch
Superior Court
group interview May 31, 1979
34. John R. Klein, Supervisor
Family Division Adoptions Office
group interview May 31, 1979

Appendix A

35. Herman Kramer, Esq.
Columbus Law Clinic
Catholic University
personal interview January 30, 1979
36. Michael Lewis, Director
Citizens' Complaint Center
personal interview April 12, 1979
37. Arnim Lipscombe, Supervisor
Intra-Family Area
Superior Court Social Services Division
group interview October 13, 1979
38. Danielle Lombardo, Esq.
D.C. Neighborhood Legal Services Program
personal interview December 6, 1978
39. Deborah Luxenberg, Private Practitioner
personal interview May 30, 1979
40. John Long, Esq.
practicing attorney
personal interview December 13, 1978
41. Charles Mayer, Esq.
practicing attorney
personal interview December 4, 1978
42. Honorable Bruce Mencher
Associate Judge
D.C. Superior Court
personal interview May 2, 1979
43. Lee Partridge, former Staff Director
Human Resources and Aging Committee
Council of the District of Columbia
personal interviews December 7, 1978, May 29, 1979
44. Joseph Perry, Supervisor
Family Division Reciprocal Support Unit
D.C. Superior Court
personal interviews October 31, 1979, January 22, 1980
45. Ann Phillips
Family Division Domestic Relations Branch
Superior Court
group interview May 31, 1979

Appendix A

46. Robert Pillote, Esq.
telephone interview January 22, 1979
47. Cary Pollak, Esq.
Office of the Corporation Counsel
personal interview July 1979, September 28, 1979
48. Chris Reuss, Esq.
private attorney
personal interview May 25, 1979
49. Suzanne Richards, Esq.
practicing attorney
personal interview December 8, 1978, February 9, 1981
50. Ed Ricks, Deputy Clerk
Superior Court Family Division
group interview September 12, 1978, May 31, 1979
51. James Riley, Esq.
National District Attorneys' Association
telephone interview December 11, 1979
52. Dovey Roundtree, Esq.
practicing attorney
personal interview December, 1978
53. Honorable Joseph M. Ryan, Jr.
Associate Judge
D.C. Superior Court
personal interview May 3, 1979
54. Alan Schuman, Director
Superior Court Social Services Division
group interview October 13, 1979
55. Peter Sherman, Esq.
practicing attorney
personal interview October 25, 1978
56. Linda Singer, Esq.
practicing attorney
personal interview January 1979
57. Joseph Smith, M.D.
John Howard Pavillion
St. Elizabeths' Hospital
personal interview January 3, 1979

Appendix A

58. Sidney Sprinkle, Supervisor
Family Finance Office
Superior Court
group interview May 31, 1979
59. Mary Ann Stein, Esq.
personal interviews November 7, 1978, November 3, 1980
60. Honorable William Stewart
Associate Judge
D.C. Superior Court
personal interview April 30, 1979
61. Ms. Jinger Swisher
Pierce-Warwick Adoption Service
personal interview May 23, 1979
62. Meshall Thomas, Paralegal
Women's Legal Defense
Fund, Emergency Domestic Relations Project
telephone interviews May 28, 1979, November 1980
63. Mr. John Theban
Family and Children Services
personal interview May 25, 1979
64. Julius Turner, Chief
Warrant Operations
U.S. Marshal's Service
group interview September 12, 1979
65. Dortha Walker, Supervisor
Intra-Family Area
Superior Court Social Services Division
group interview October 13, 1979
66. Constance Williamson, Deputy Clerk
Family Division Intra-Family and Neglect Branch
Superior Court
group interview May 31, 1979
67. Wesley Williams, Sr., Esq.
practicing attorney
personal interview December 18, 1978
68. Hal Witt, Esq.
practicing attorney
personal interview February 15, 1979
69. Ms. A. Wolf
Catholic Charities
personal interview May 23, 1979

Appendix B

Bibliography

- Association of Family Conciliation Courts. Conciliation Courts Review, Vol. 18, No. 1, June 1980 and Vol. 17, No. 2, September, 1979. Association of Family Conciliation Courts, Beverly Hills, Calif.
- The Association of Family Conciliation Courts, Division of Technical Assistance and Research. Guidelines for Establishing Conciliation Courts and Court Connected Family Service Programs. Association of Family Conciliation Courts, Fort Lauderdale, Fla. February 1979.
- Austern, David, Paul R. Rice, Michael F. Anderson et al. A Review of the District of Columbia Citizens Complaint Center. Criminal Courts Technical Assistance Project, The American University Law School, Washington, D.C. August 1976.
- Bloom Murray. "Treatment of Domestic Violence: A New Procedure." Crime Prevention Review, Vol. 6, No. 1. Office of the Attorney General Crime Prevention Unit, State of California, Los Angeles, Calif. October 1978.
- Bradshaw, Jonathan, David Piachand. Child Support in the European Community. Bedford Square Piers of the National Council of Voluntary Organizations, London, G.B. 1980.
- California, State of. Government Code. "Title IIA, Conciliation Proceedings." State of California, Sacramento, Calif.
- California, State of. Code of Civil Procedure. "Title IIA, Conciliation Proceedings". State of California, Sacramento, Calif.
- Child Welfare League of America. Standards for Adoption Services, Revised Edition.
- Committee on Regulation, D.C. Department of Welfare. Manual on Adoption Procedure. Government of the District of Columbia, Washington, D.C. October 1969.
- District of Columbia Courts. Annual Reports 1976, 77, 78, 79. Washington, D.C.
- Fund for Modern Courts, Inc. Family Court Monitoring Project. Fund for Modern Courts, Inc. New York, N.Y. March 1977.
- Fund for Modern Courts, Inc. The Family Court and You. Fund for Modern Courts, Inc., New York, N.Y., undated.

Appendix B

- Johnson, Earl, Jr., Valerie Kantor and Elizabeth Schwartz. Outside the Courts - A Survey of Diversion Alternatives in Civil Cases. National Center for State Courts. Denver, Colo. January 1977.
- Kornblum, Carole Ritts. "Report on the Attorney General's Conference on Domestic Violence." Crime Prevention Review, Vol. 6, No. 1. Office of the Attorney General, Crime Prevention Unit, State of California, Los Angeles, Calif. October 1978.
- Leahy, Francis J. III. Evaluation of Screening Criteria Used at the Citizens Complaint Center, Washington, D.C. Interactive Qualifying Project, Worcester Polytechnic Institute, Worcester, Mass. March 1977.
- Lee, Barbara E. "Consumer Evaluation of a Family Court Service." Conciliation Courts Review, Vol. 17, No. 3. December 1979.
- Lichtman, Judith L. et al. Proposed Revision to Title 16, Chap. 10 of the D.C. Code. "Proceedings Regarding Intra-family offenses." Women's Legal Defense Fund of Columbus Community Legal Clinic, Washington, D.C. 1980.
- McGillis, Daniel, Joan Mullen. Neighborhood Justice Centers: An Analysis of Potential Models. National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice. October 1977.
- Milne, Ann. "Custody of Children in a Divorce Process: A Family Self Determination Model." Conciliation Courts Review, Vol. 16, No. 2. September 1978.
- Saari, David J. Proposed Study Guide for Brief Assessment of the "On-Call" Assignment System for Contested Divorce Cases in the Superior Court of the District of Columbia. Criminal Courts Technical Assistance Project. The American University Law School, Washington, D.C. July 1978.
- Sauber, Mignon, Edith Taittonen. Guide for Determining the Ability of an Absent Parent to Pay Child Support. Community Council of New York, New York, N.Y., May 1977.
- Singer, Linda R. "Nonjudicial Dispute Resolution Mechanisms: The Effects on Justice for the Poor" Clearinghouse Review, December 1979.

Appendix B

Smith, Joseph, MD. Effectiveness of Representation by Counsel in Mental Health Commitments to St. Elizabeths Hospital: Public Defenders Service v. Private Bar. D.C. Bar Court Study Committee, unpublished study, Washington, D.C. September 5, 1980.

Franks, Maurice R. "How to Calculate Child Support, "Case and Comment, pp. 3-9, January-February, 1981.

Whittier College School of Law. Descriptive Report of the District of Columbia Superior Court Caseflow, Working Papers. Washington, D.C., October 1979.

Appendix C

CHILD AND SPOUSAL SUPPORT GUIDELINE

The Court System Study Committee of the D.C. Bar has reviewed variety of source materials relating to child and spousal support guidelines. Representative of the literature are the following:

- Item 1. "Family Law Section's Recommendations" in Family Advocate, Spring, 1979. Vol. 1, No. 4. (author: Rolland Lamensdorf)
- Item 2. Support Guidelines from the Maricopa County (Arizona) Domestic Relations Handbook.
- Item 3. Support Guidelines, Los Angeles County Superior Court, Family Law Department.
- Item 4. Excerpt from article by Maurice R. Franks. "How to Calculate Child Support" in Case and Comment, January - February, 1981.

Appendix D

Sample Form Pleadings Used by Superior Court of California

On successive pages of this Appendix appear an illustrative sample of the existing form pleadings used by the Superior Court of California County of Los Angeles in the domestic relations area. Form pleadings which are appended include:

- Petition (Family Law)
- Response (Family Law)
- Application for Order and Supporting Declaration
- Income and Expense Declaration including Property
- Temporary Restraining Order

In addition to the above pleadings the following forms** from the California system are available at the D.C. Bar offices 1426 H Street, N.W. Washington, D.C.:

- Instructions for Orders Prohibiting Domestic Violence
- Appearance, Stipulation and Waivers
- Summons
- Confidential Counseling Statement (marriage)
- Order to Show Cause
- Notice of Motion
- Responsive Declaration to Order to Show Cause or Notice of Motion
- Order to Show Cause and Declaration for Contempt
- Order Assigning Salary or Wages
- Request to Enter Default
- Interlocutory Judgment of Dissolution of Marriage
- Judgment Order Prohibiting Domestic Violence

Appendix D

- Request and Declaration for Final Judgement
of Dissolution of Marriage
- Final Judgment
- Notice of Entry of Judgment
- Notice of Motion and Declaration for Joinder
- Order after Hearing
- Summons (Joinder)
- Order for Publication of Summons
- Declaration under Uniform Custody of Minors Act
- Application and Declaration (Domestic Violence)
- Order to Show Cause and Temporary Restraining Order
- Responsive Pleading to Order to Show Cause
- Responsive Declaration to Order to Show Cause
- Order Prohibiting Domestic Violence
- Proof of Service
- Temporary Restraining Order

** Copies of forms will be made available for those interested
while limited supply lasts.

Committee Report

CHILD NEGLECT AND JUVENILE DELINQUENCY REPORT
OF THE
D.C. COURT SYSTEM STUDY COMMITTEE
THE DISTRICT OF COLUMBIA BAR

December 17, 1980

Charles A. Horsky
Committee Chairman

Samuel F. Harahan
Staff Director

(377)

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Section I General Comparison of the D.C. Juvenile Court System Before and After The 1970 D.C. Court Reform Act	5
Section II Child Neglect and the D.C. Court System	13
A. Entry of Child Neglect Cases Into the D.C. Superior Court	13
B. Initial Hearing	17
C. Status Hearings	22
D. Fact Finding Hearings	22
E. Stipulations	24
F. Disposition	25
G. Reviews	28
H. Termination of Parent-Child Relationship	31
I. Review After Termination	33
J. Counsel	34
K. Superior Court Social Services	37
L. Judges	40
M. Data	42
Section III Juvenile Delinquency	43
A. The petitioning/Diversion Decisions	43
B. Pretrial Supervision	50
C. Rehabilitating Youth in the Juvenile Justice System	93

Section IV	Systems Common to the Superior Court Family Division	124
A.	Juvenile Delinquency and Neglect Prosecution Function - The Office of the Corporation Counsel	124
B.	The Defense Function in the Juvenile and Neglect Cases	141
C.	The Family Division Judiciary	165

Appendix A - Persons Interviewed

Appendix B - Bibliography

Appendix C - Dangerous Juvenile Subgroups Compared To Total Juvenile Subgroups

Appendix D - D.C. Superior Court Family Division Juvenile Rule 106

CHILD NEGLECT AND JUVENILE
DELINQUENCY REPORT RECOMMENDATIONS

Page

Section II. Child Neglect and the
D. C. Court System

1. Recommendation: The Court Study Committee recommends that the D.C. Code Section 16-2305 be amended to make explicit the requirement that child neglect cases referred by the Department of Human Services be petitioned within seven days of referral to the Corporation Counsel. Pending legislative amendment in this regard, the Committee urges the Corporation Counsel to adopt a policy of making neglect petitioning decisions within a seven day period of referral. 16

2. Recommendation: The Court Study Committee recommends that the Superior Court Family Division and the Department of Human Services collect data on those petitioned neglect cases which are resolved by dismissal or stipulation in order to ascertain whether some cases could be diverted at, or prior to, petitioning. 17

3. Recommendation: The Court Study Committee recommends that the Superior Court vigorously enforce the statutory requirement that it determine that no appropriate alternative to shelter placement is available that can protect a child alleged to be neglected before entering a shelter care order. 19

4. Recommendation: The Court Study Committee recommends that Superior Court Neglect Rule 5(c) on criteria for shelter care in neglect cases be amended to reflect the statutory requirement referred to in the preceding recommendation and to require evidence of serious danger to the child. The criteria presently enumerated in Rule 5(c) relate almost exclusively to parental conduct. 19

5. Recommendation: The Court Study Committee recommends that the Superior Court enforce the statutory requirement for weekly visitation during the shelter care of allegedly neglected children. Shelter care orders should specify the visitation schedule and responsibilities. Administrative convenience should not be accepted as a reason for less frequent visitation. Judicial review of the visitation order and its implementation should be a requisite element of the status hearing proposed in the following recommendation.

21
6. Recommendation: The Court Study Committee recommends that the Superior Court Family Division establish a Rule requiring a status hearing in every neglect case within 14 Court days of the initial hearing. The purpose of the hearing should be exploration of the possibility of stipulation or dismissal, completion of discovery and motions, and consideration of issues relating to trial. The Court Rule should also require that when a child is in shelter care, the status hearing will include review of the need for continued shelter care and of the visitation order and its implementation.

22
7. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide limited immunity in a criminal cases for testimony by parents or other relevant parties in civil child neglect proceedings.

23
8. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule requiring that fact finding hearings be scheduled in all neglect cases within 21 court days of petitioning. The Committee recognizes that dismissal is not an alternative in neglect cases. However, we are persuaded that the Court should establish stringent time goals and seek to enforce them vigorously given the serious impact delay in these cases has on the children and the families.

24

9. Recommendation: The Court Study Committee recommends that continuances for fact finding hearings in neglect cases be granted sparingly and only in exceptional circumstances and for no longer than 7 court days. Fact finding hearings which are continued because of judicial unavailability should be held the next court day and given priority on the calendar. 24
10. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule governing stipulations in neglect cases and requiring that they include a plan that addresses all the matters delineated in D.C. Code § 16-2319(c), regarding services, time estimates, criteria for future decisions, and specific information on placements. 25
11. Recommendation: The Court Study Committee recommends that the Superior Court adopt a Rule for the approval of stipulations in neglect cases that requires the judge to ascertain that the parents made intelligent and knowing agreement after receiving effective assistance of counsel. The Committee takes cognizance of both the past effective use of hearing commissioners in the mental health and domestic relations areas of the Superior Court, and the recent retirement of the Family Division hearing commissioner in the juvenile area. Consideration should be given by the Court to expanding the duties and authority of the juvenile hearing commissioner to include acting on uncontested continuances, and recommending action in cases involving stipulations, consent decrees, and other similar matters short of trial. 25
12. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule requiring the convening of disposition hearings in child neglect cases no later than 10 calendar days after the fact finding hearings. The time limit recommended takes into account current D.C. Law requiring that predisposition reports be prepared and given to counsel five days prior to the factfinding hearing. The Committee supports the existing statute in this regard. 27

13. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule for giving notice and an opportunity to be heard to an agency ordered by the Court to provide a service pursuant to D.C. Code § 16-2320(5) if such agency is not already before the Court. While the Code gives the Court authority to order agencies to provide services, the relevant agency (e.g. D.C. Public Schools) is not always a party to the court proceedings so that rules must be adopted to implement the Court's power.

27
14. Recommendation: The Court Study Committee recommends that the Superior Court Family Division enforce the provision of D.C. Code § 16-2322 which provides that disposition orders in child neglect cases can be extended only after notice to parties and a Court hearing. The Family Division Clerk's Office should be responsible for scheduling the review hearings and sending notice to all parties.

28
15. Recommendation: The Court Study Committee recommends that the Superior Court Family Division Clerk's Office assume the administrative leadership for scheduling child neglect review hearings according to the statutory mandate of D.C. Code § 16-2323. The intent and language of the statute clearly require full Court hearings at specified intervals.

30
16. Recommendation: The Court Study Committee recommends that the Superior Court Family Division enforce the statutory requirements concerning the review reports that are to be submitted to the Court in child neglect cases. Accordingly, judges in the Superior Court Family Division should insist that factual information on services, visitation, parental actions, and future plans be submitted, to enable the Court to perform its review function in a meaningful fashion.

31

17. Recommendation: The Court Study Committee recommends that the Superior Court utilize its powers, including those of contempt, to require social workers and attorneys of record in child neglect cases to file reports on time and to attend disposition and review hearings. 31
18. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule limiting the continuance of review hearings in child neglect cases to a maximum of 5 Court days except in exceptional circumstances. The Rule should require notice of a request for continuance to counsel for all parties and an opportunity to contest the continuance. The Court should take care to ensure that exceptional circumstances do not become the norm. 31
19. Recommendation: The Court Study Committee recommends that the Corporation Counsel, attorneys for the children, and Superior Court Family Division Judges who review neglect cases at the times specified in the D.C. Code, give serious consideration at such reviews to whether termination of the parent-child relationship is in the child's best interests. In order to meet the serious obligations implicit in this recommendation, several steps would be required. The Corporation Counsel would have to fill all its neglect attorney positions so it could consider and file motions for termination. The Committee's recommendations relating to the conduct and timing of reviews and to judicial training and orientation would also have to be implemented. 33
20. Recommendation: The Court Study Committee recommends that the Clerk of the Superior Court Family Division review cases in which termination of the parent-child relationship has been ordered, and schedule review hearings in those cases where the child has not been placed for adoption within 6 months after the termination order. Notice of the hearings should be sent to all parties and to persons with whom the child has been living for at least six months, in accordance with D.C. Code § 16-2360. 33

21. Recommendation: The Court Study Committee recommends that the Superior Court immediately expand the pool of attorneys from which counsel are appointed to represent parents in neglect cases. The Committee endorses the thrust of the D.C. Judicial Conference Civil Legal Services Report in this regard. However, we urge expeditious attention to this civil legal service issue for the reason that the District Government is directly and integrally involved in initiating the civil proceedings to remove the children from the parent(s). 36
- (Additional recommendations regarding the counsel aspect of the child neglect area are set forth in a subsequent section of this juvenile and neglect report concerning defense counsel.)
22. Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule specifying a time limit of 10 Court days after the initial hearing for completion of the social investigation and service plan in child neglect cases. The Court Rule should require, for cases in which shelter care has been ordered, that the report include information on the investigation of alternatives to placement such as return home with supportive services, relatives, etc. The Rule should require distribution of the report and plan at least 2 Court days before the status hearing to counsel for all parties. The Court should review the plans with care and assure that the reports and plans meet the requirements enumerated here and those in § 16-2319(c) regarding services, time estimates, criteria for future decisions, and specific information on placement decisions. 40

23. Recommendation: The Court Study Committee recommends that all judges prior to commencing their assignment in the Superior Court Family Division be required to participate in a training program that would include an orientation to the Court's role and responsibilities in child neglect cases as enumerated in the Prevention of Child Abuse and Neglect Act of 1977. The training should continue on a regular basis during a judge's assignment to Family Division. The training should include at the least presentations on: 41
- a) the causes of child abuse and neglect;
 - b) treatment methods and outcomes;
 - c) resources and disposition alternative available in D.C.;
 - d) the effects of placement and separation on children and the importance of maintaining parent-child ties; and
 - e) the importance of permanence and information on adoption resources.
24. Recommendation: The Court Study Committee recommends that the Superior Court Family Division develop and adopt a bench book that would provide check lists to judges in neglect cases, on applicable time limits for hearings and reports, contents of reports, findings required for shelter care and commitment, etc. 41
25. Recommendation: The Court Study Committee recommends that the Superior Court Family Division revise all its Neglect Rules to comply with the provisions of the Prevention of Child Abuse and Neglect Act of 1977 and to assure full treatment of all aspects of the cases. 42
26. Recommendation: The Court Study Committee recommends that the Superior Court collect, analyze and publish statistics on child neglect cases including the types of cases, case dispositions, lapse times, recidivism and other information that could assist the Court in tracking cases and evaluating its performance. 42

Section III. Juvenile Delinquency

27. Recommendation: The Court Study Committee recommends that the Superior Court Social Services Division, Corporation Counsel Juvenile Section and the Metropolitan Police Department examine cases that fall out of the juvenile justice system through no-petition, dismissal or other method short of commitment, and identify a category of cases that police can divert prior to referral to the Superior Court, and a category of cases that can be diverted by Court Social Services. Superior Court Juvenile Rule 103 should be amended to reflect these categories. 49
28. Recommendation: The Court Study Committee recommends that the Superior Court seek to expand diversionary programs and keep extensive statistics on which the effectiveness of the various programs can be measured and compared to more traditional processes and programs. 49
29. Recommendation: The Court Study Committee recommends that D.C. Code § 16-2310 be amended to state more explicitly a policy favoring release of alleged delinquents during the pretrial period. The Committee further recommends that, prior to the enactment of clarifying language in this area, the Juvenile Rules of the Superior Court be modified to articulate clearly this approach. (See Interim Status Standard 3.1, IJA/ABA.) 57

30. Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to prohibit the detention of juveniles prior to adjudication where such detention is solely for the purposes of:

57

(a) punishing, treating, or rehabilitating the juvenile;

(b) satisfying the demands of a victim, the police, or the community;

(c) permitting convenient administrative access to the juvenile;

(d) due to the lack of a more appropriate facility or custody status alternative (See Interim Status Standard 3.3., IJA/ABA.)

(e) allowing parents to avoid their legal responsibilities.

The Court Study Committee believes that the recommendation is of sufficient importance to be stated in the D.C. Code. At the same time the Committee concludes that the existing statutory authority of the D.C. Courts in the rulemaking area is broad enough to permit this change in the interim by Court Rule. The Committee also notes that when parents refuse to allow a child to come home shelter care facilities or foster home placement can be used, and/or a neglect petition filed.

31. Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to prohibit the detention of juveniles post adjudication and prior to Court disposition where such detention is solely for the purposes of:

58

(a) punishing, treating or rehabilitating the juvenile;

(b) satisfying the demands of a victim, the police, or the community;

(c) permitting convenient administrative access to the juvenile;

(d) due to lack of a more appropriate facility or custody status alternative. (See Interim Status Standard 3.3, IJA/ABA.)

(e) allowing parents to avoid their legal responsibilities.

The Court Study Committee believes that the recommendation is of sufficient importance to be stated in the D.C. Code. At the same time the Committee finds that the existing statutory authority of the D.C. Courts in the rulemaking area is broad enough to permit this change in the interim by Court Rule.

32. Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to permit detention of alleged delinquents only for the purposes of:

58

(a) insuring appearance at Court hearings:

(b) reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim status period; or

(c) protecting the accused juvenile from imminent bodily harm, upon his or her request, and only at a facility to which he or she agrees.

(d) reducing the likelihood the juvenile may commit additional felonies.
(See Interim Status Standard 3.2 IJA/ABA.)

33. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide clearly that when the freedom of movement of an alleged delinquent is to be restricted in any way in the pretrial and predisposition period, a form of conditional supervised release shall be favored over custodial placement. The Court has to balance as precisely as possible the need to control the juvenile during the pretrial period with the juvenile's right of maximum liberty and freedom of movement. (See Interim Status Standard 3.4, IJA/ABA.)

59

34. Recommendation: The Court Study Committee recommends that the Council of the District of Columbia define by statute the separate interim period authority and responsibilities of the Police, the Superior Court Social Service Intake personnel and the Judges. Such statutory guidance should reflect the differences in the respective roles of the various decision-makers; the extent to which the discretion exercised by each is subject to control and subsequent review by others; and the time, information, and resources available to each at the time of decision. (See Interim Status standard 1.2, IJA/ABA, and subsequent recommendations in this section.) 59
35. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require the release on a summons or citation of any juvenile arrested for a status offense or misdemeanor unless the juvenile requests protective custody, is in need of emergency medical assistance, or is known to be in fugitive status. In such misdemeanor and status offense cases, the D.C. Code should provide that the Police are permitted to release a youth on personal recognizance, to a relative, or to other responsible persons and organizations, public or private. It is the position of the Committee that the fact that a parent cannot be located does not relate to the permissible reasons for detaining a juvenile on a minor criminal charge. Existing provisions of the D.C. Code, § 16-2309, give the Police ample authority to handle properly juveniles suspected of being neglected. While failure to locate a parent, given the particular circumstances of the case, such as the age of the child and the time of day, may be factors indicating child neglect, these factors should not be part of detention criteria. (See the status offender and neglect discussion appearing elsewhere in this Report. Also see Interim Status Standard 5.6, IJA/ABA.) 61

36. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to permit the Police to hold in custody juveniles arrested: 61
- (a) on charges of first or second degree murder, or forcible rape; or
 - (b) for other serious offenses when:
 - (1) the juvenile is charged with a felony crime of violence and he/she is under Court supervision for a delinquent act; or
 - (2) the juvenile is charged with a felony and is on release status on another felony charge;
 - (3) the juvenile is in fugitive status; or
 - (4) the juvenile has a record of willful failure to appear in Court within the past two years. (See Interim Status Standard 5.6, IJA/ABA.)
37. Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to permit Superior Court Social Services intake staff to release youth or place them in a shelter care facility before the initial court appearance on conditions appropriate to the various factors set forth as recommendations below. 65
38. Recommendation: The Court Study Committee recommends that the Superior Court adopt specific Juvenile Rules setting out guidelines prescribing appropriate levels of detention for those alleged delinquents who may be detained pretrial. (See Interim Status Standard 6.6, IJA/ABA.) 65
39. Recommendation: The Court Study Committee recommends that specific guidelines be established by statute and by Court rule which would require the release of alleged delinquents in the pretrial period unless: 65
- (1) the juvenile is charged with a felony crime of violence, and which, if proven, would be likely to result in commitment to a secure institution, and;

(a) the charge is first or second degree murder, or forcible rape; or

(b) the juvenile is, as a result of a delinquency finding, either committed or on probation; or

(c) the juvenile is an escapee from a facility to which the Court committed him or her for a delinquent act; or

(d) the juvenile has a record within the past two years of willful failure to appear before the Court; or

(2) the juvenile is a fugitive from another jurisdiction.

(3) the juvenile is charged with a felony and is currently awaiting trial for a felony charge. (See Interim Status Standard 6.6, IJA/ABA.)

When a case comes within these specific instances detention is discretionary, not obligatory.

40. Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule requiring that each detention order for alleged delinquents be accompanied by a specific written or recorded oral statement as to the findings of fact and reasons why no measure short of detention will meet the permissible purposes of detention as set forth in an earlier recommendation. It is the Committee's contention that the mere checking of boxes on a preprinted order is not sufficiently specific to comply with the spirit of this recommendation. (See Interim Status Standards 7.7A, IJA/ABA.)

69

41. Recommendation: The Court Study Committee recommends that transcripts of probable cause hearings be available to counsel upon request within 48 hours.

69

42. Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule specifying that a judicial order of detention shall be construed as authorizing non-secure detention except where such order contains express direction to the contrary supported by reasons. (See Interim Status Standards 7.7, IJA/ABA.) 69
43. Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require each Superior Court Family Division, New Referral Judge to visit each facility used for judicially ordered secure detention within the first two weeks of his or her assignment. The D.C. Code should further provide that facilities not visited by judicial officers, according to the schedule set forth in the Code as amended shall not be utilized for the secure detention of juveniles. (See Interim Status Standards 7.8, IJA/ABA.) 69
44. Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require that each residential facility utilized for the detention or shelter care of alleged delinquents, PINS, or neglected or abused children shall be visited by a Family Division Judge at least once every three months. The Code should also provide that residential facilities not visited according to the schedule set forth in the Code shall not be utilized for the detention of juveniles. (See Interim Status Standard 7.8, IJA/ABA.) The Committee recommends that the D.C. Code be further amended to require that the Chief Judge of the Superior Court be responsible for monitoring this activity, either directly or through such delegations as he/she may determine. (Foster family homes should be specifically excluded from the definition of a residential facility.) 70

45. Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to prohibit the practice of placing alleged delinquents in levels of custody more restrictive than necessary simply because less restrictive facilities or supervision programs are unavailable. The Committee observes that the present practice is that when a Judge determines that a child should be placed in a home detention program or shelter house and a slot is not currently available, frequently the child is placed in a more confined status. The IJA/ABA Standards state that this practice is not acceptable, and the Committee concurs with the IJA/ABA Interim Status Standards in this area. (See Interim Status Standard 3.6, IJA/ABA.) 70
46. Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule authorizing the temporary, non-overnight, release of detained juveniles in appropriate custody for the purposes of: 71
- (a) preparing their cases; or
 - (b) being evaluated for placement, program admission or other purposes.
47. Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require that a detention review hearing be held no later than 14 calendar days after a secure custody detention order is issued, and at the time a fact finding hearing is continued for a juvenile held in secure detention. (See Interim Status Standard 7.8, IJA/ABA.) 71

48. Recommendation: The Court Study Committee recommends that the Superior Court enter into an agreement with the Department of Human Services providing that when a Judge orders secure detention for an alleged delinquent, the Department of Human Services Screening Team is to review the case, explore less secure custody alternatives, and report back to the Court at the mandatory 14 calendar day detention review hearing proposed in the preceding Recommendation. (The Committee is informed of a recently adopted DHS Detention Plan which may impact on this matter.) Should it not be feasible to execute such an agreement, the Court should have the Social Services Division, or a third party contractor, perform this task. 71
49. Recommendation: The Court Study Committee recommends that the Department of Human Services immediately expand the capacity of non-custodial pretrial supervision programs for juveniles who do not meet the detention criteria recommended above but, who may require some supervision. 81
50. Recommendation: The Court Study Committee recommends that the Superior Court, Family Division Administrative Judge, The Director of the Superior Court Social Services Division, and the Social Services Commissioner of the Department of Human Services, met quarterly for at least the following purposes: 82
- (a) assessing adequacy of pretrial supervision programs;
 - (b) assuring the development of sufficient alternatives to secure detention;
 - (c) identifying steps to improve the quality of programming and supervision in existing facilities;
 - (d) identifying strategies to improve Court/DHS communications concerning vacancies and waiting lists for various programs;
 - (e) developing policies to regulate the facilities and programs used for pretrial supervision, using as guides the IJA/ABA Standards 10.5, 10.6, and 10.7 relating to size, education, and rights of juveniles in detention.

(f) insuring that no juveniles are held in secure facilities because less secure facilities are not available. (See IJA/ABA Interim Status Standards, 6.6 and 10.8.)

The Clerk of the Family Division should be charged with the administrative responsibility of assisting the Administrative Judge in these efforts.

51. Recommendation: The Court Study Committee recommends that the Superior Court assess the adequacy of existing juvenile pretrial supervision programs and facilities used by the Family Division of the Superior Court. To facilitate this activity, the Court should receive monthly reports from the Department of Human Services and from the judges who visit the facilities and programs. The reports should include information on each facility's size, characteristics of the detained population, staffing ratios, and major problems at each facility and program utilized for juveniles' pretrial supervision. (See IJA/ABA Interim Status Standard 3.6.) 82
52. Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge require bi-weekly reports on the number, characteristics and other pertinent data on youth placed on waiting lists for pretrial programs. 83
53. Recommendation: The Court Study Committee recommends that the Superior Court regularly collect and aggregate data on the factors relevant to the detention, control, and release of juveniles referred to the Court. Analyses should be undertaken of the numbers, characteristics, and subsequent juvenile justice involvement, school, and employment information on juveniles referred to specific programs including secure detention, non-secure detention, and other release programs for the overall purposes of: 83
 - (a) evaluating the relative appropriateness and risks of various controls;
 - (b) permitting projection of program needs; and

(c) evaluating adherence to established guides and rules, and determining the need for modifications thereto. (See IJA/ABA Interim Status Standard 7.9B.)

54. Recommendation: The Court Study Committee recommends that use of the existing Receiving Home for Children of the Department of Human Services as a secure detention facility should be permitted only after completion of the renovation of the facility to meet IJA/ABA architectural standards. Alternatively, the continued use of the Receiving Home should be very strictly limited as provided in the existing Superior Court Orders in the Savoy Case. 83
55. Recommendation: The Court Study Committee recommends that fact finding hearings in all juvenile cases be scheduled within 30 calendar days of the initial or detention hearing by the Court. Amendment of the existing Superior Court Juvenile Rules would appear to be the most effective method of effecting this change promptly, but a statutory change should also be sought. 89
56. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that a fact finding hearing or trial, be held within 30 calendar days of the detention hearing for any juvenile in detention. The Code should further provide that when this time schedule is not met the juvenile is to be released from detention pending the fact finding hearing. (The Committee has recommended elsewhere that the Superior Court immediately adopt a rule requiring that the Corporation Counsel provide full discovery in juvenile cases at the initial or detention hearing -- see the Corporation Counsel Section of this Juvenile and Child Neglect Report.) 89
57. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that a fact finding hearing be held within 60 calendar days of the initial hearing for all juvenile cases, unless the delay is requested in writing by the juvenile's attorney, or the juvenile is a fugitive from the Court. The Code should further provide that when the time limit is not met, the case should be dismissed with prejudice. 89

58. Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to provide that status hearings be required in all juvenile cases within 20 calendar days of the detention or initial hearing by the Court. The amended Juvenile Rules should also provide that all motions filed but not heard by the time of the status hearing as well as pleas, consent decrees and dismissals shall be considered at that hearing as well. This status hearing should be combined with the detention review hearing in detention cases. 89
59. Recommendation: The Court Study Committee recommends that the Superior Court Family Division develop, maintain, and periodically release statistics on the lapse times between all major court events for juvenile delinquency, P.I.N.S., and neglect cases handled by the Court. Exception reports covering each case exceeding the prescribed time limits should be furnished periodically to the Administrative Judge of the Family Division, the Chief Judge of the Superior Court, the Clerk of the Family Division, and released publicly. 90
60. Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to require that disposition hearings be held within ten Court days of the fact finding hearing in detention cases, and within 15 Court days of the fact finding hearing in community cases. The amended rules should also provide that continuances beyond the ten or fifteen day period shall be granted only with the consent of the juvenile's attorney, and should not exceed ten calendar days unless good cause is shown. 90
61. Recommendation: The Court Study Committee recommends that the Superior Court and the Department of Human Services adopt rehabilitative goals and objectives for youth passing through the District of Columbia juvenile justice system. Methods for assessing the attainment of established rehabilitative goals should be developed and used in both individual cases and aggregate types of cases, and rehabilitative programs. 96

62. Recommendation: The Court Study Committee recommends that the Superior Court leadership enunciate and enforce a public policy regarding the impermissibility of detaining juveniles prior to trial to rehabilitate them; that juveniles in detention must be provided with the care which parents are expected to give their children (at least adequate education, housing, medical care and access to needed services), and that rehabilitative services be available pretrial for detained and released juveniles on a voluntary basis. 98
63. Recommendation: The Court Study Committee recommends that the consent decree provision of the D.C. Court Reform Act be abolished. Preparatory to making this statutory change diversionary alternatives and referral agreements should be developed by the Superior Court Family Division leadership with assistance from the Social Services Division, the Corporation Counsel, the defense bar, and others. Additionally the Committee's recommendations in the Counsel section of this Report also bear implementation. It is important that policy makers not solve the consent decree problem by an "administrative redefinition" of previously consent decree-eligible youth (as occurred earlier with status offenders and resulted in a reduction of services to this population). 103
64. Recommendation: The Court Study Committee recommends that the Superior Court Family Division, in conjunction with the Social Services Division, formulate measures for the rehabilitation for youth handled by the Court, and that evaluative efforts be augmented to assess the effectiveness of the various procedural approaches for deploying Social Services Division staff to facilitate youths' rehabilitation. Experimental programs should be developed to: (1) provide a limited number of youth on probation with intensive counseling, school and family services; and (2) compare these programs to ongoing regular services; and (3) change staff deployment policies as necessary. 106

65. Recommendation: The Court Study Committee recommends that an interagency group be convened by the Director, Social Services Division to assess needed services for youth on consent decrees, probation or commitment, and living at home. Where appropriate, the Family Division judicial leadership should forcefully advocate the expansion of needed services through new funding, ear-marking of existing services, or improved public/private agency cooperation. This inter-agency group should consider recommending to the Superior Court leadership and to the Joint Committee on Judicial Administration expansion and/or reallocation of the Court Social Services resources to increase particular types of services for those youth in the juvenile justice system who are now underserved. 107
66. Recommendation: The Court Study Committee recommends that the Superior Court leadership, in conjunction with the Director of the Social Services Division, take steps to have an objective assessment made of the services provided by the existing Child Guidance Clinic and that changes as appropriate be made following such evaluation. (The Committee takes note of the present broker service model being used by the Social Services Division and urges that extension of the concept to the psychological evaluation area be considered. Consideration should also be given to the development of independent consultant service agreements and other devices for providing diagnostic services when needed.) 108
67. Recommendation: The Court Study Committee recommends that Superior Court leadership strongly support the initiative of its Social Services Division in the handling of status offenders; that the important work of the PINS Planning Committee be continued; and that resources in public and private agencies be identified to staff the interagency program proposed by the PINS Planning Committee. 109

68. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to: (1) prohibit the detention or commitment of status offenders in secure facilities, consistent with the national LEAA mandate; and (2) permit police officers, through a formal mechanism, to refer youth with family and school problems directly to appropriate service agencies. 110
69. Recommendation: The Court Study Committee recommends that the Administrative Judge of the Family Division be responsible for assuring that the Court is provided sufficient information to enable an ongoing assessment of rehabilitative programs in terms of their meeting the needs of youth as identified in the treatment plans. 116
70. Recommendation: The Court Study Committee recommends that Superior Court Family Division Judges and Social Services Division leadership meet regularly with Department of Human Services staff to discuss the effectiveness of rehabilitative services for juveniles and strategies to improve them. 116
71. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to articulate: (a) the goals of rehabilitation of juvenile offenders; (b) the oversight role of the Superior Court in this rehabilitation; (c) a requirement that individual juvenile treatment plans be placed in the official Court Social file on each youth at the time of Court disposition; (d) the assessment of progress, as measured by these treatment plans at review hearings; and (e) a change of placement or release of juveniles who are not being effectively rehabilitated according to treatment programs. The Committee believes that D.C. Council should take the initiative in developing specific legislative approaches to implement this recommendation. 116

72. Recommendation: The Court Study Committee recommends that an evaluation of juvenile aftercare be undertaken. The Committee would encourage the Superior Court Family Division leadership, the Director, Social Services Division, and the Youth Services Administration of the Department of Human Services to work together in the development of the juvenile aftercare evaluation study. The Committee also takes note of the availability of free technical assistance from the U.S. Department of Justice, O.J.J.D.P. to A.D. Little, Inc. to plan for or possibly conduct such an evaluation. 117
73. Recommendation: The Court Study Committee recommends that the Superior Court conduct a study of the role of the Court in overseeing rehabilitation, as measured by the achievement of treatment goals monitored in review hearings. Criteria for measuring success should be established so judges and others can be more knowledgeable about effective rehabilitation. Such a study would provide information to the Family Division about the effectiveness of efforts of the Social Services Division and the Department of Human Services to re-direct juveniles. 121
74. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that treatment plans be part of disposition orders and to require that all disposition orders in delinquency and PINS cases be reviewed at a hearing every six months. The Superior Court Family Division Clerk's Office should be responsible for scheduling the review hearings and notifying the juvenile, defense counsel, the probation or DHS worker, and the Corporation Counsel. The JUSTIN juvenile information system should be designed to monitor reviews and alert the Court to cases which have not been reviewed as required. This review hearing should not be perfunctory. A written report should be submitted indicating specifically whether the treatment goals are being met and the steps the worker is taking to meet them. Where the goals have not been met, the judge should either release the youth or order special services and another review within three months. 122

75. Recommendation: The Court Study Committee recommends that judges be responsible for the reviews of all cases in which they preside over fact-finding hearings or pleas, regardless of where the judge is sitting at the time of review. 122
76. Recommendation: The Court Study Committee recommends that the Superior Court evaluate directly or contract for an assessment of the effectiveness of existing alternative juvenile rehabilitative programs employed by the Superior Court Family Division such as the Community Advocates for Youth, the Diversion Project, and the Restitution Project. 123

Section IV. Systems Common to the superior Court Family Division

77. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel increase at once the number of authorized attorney and support positions in the Family Division Section. The Committee urges the appropriate D.C. Bar Division(s) and other bar groups to support this request before the D.C. Council and the Congress. 129
78. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel take necessary management steps to maintain full authorized staffing of the Family Division Section at all times. 130
79. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel strengthen the administration of their Family Division Section: 1) by devoting sufficient management resources to it; and 2) by moving aggressively to correct management problems when they arise. 132
80. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel Family Division Section develop written guidelines for staff attorneys concerning guilty pleas, consent decrees, dispositions, and the like. 133

81. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel systematize its recruitment of new attorneys and plan ahead so that positions are filled when they become vacant. 135
82. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel institute regular training programs for new Assistant Corporation Counsel, utilizing wherever possible, resources external to the office, already available in the community. 136
83. Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel give full and complete discovery in all delinquency, PINS, and neglect cases beginning on the day of the initial or detention hearing. 138
84. Recommendation: The Court Study Committee recommends the amendment of the Superior Court Family Division Rules to provide that the Juvenile Motions Judge shall routinely dismiss, or grant by default, any motion in which without good cause shown either the defense, or the Corporation Counsel, is not ready to proceed on the day assigned for hearing motions. 139
85. Recommendation: The Court Study Committee recommends that the Corporation Counsel routinely appear at disposition hearings in neglect, delinquency, and PINS cases and advocate, in writing wherever possible, on behalf of the government. 139
86. Recommendation: The Court Study Committee recommends that the Continuing Legal Education Program of the D.C. Bar be expanded to provide curricula relating to the juvenile and neglect practice area. Courses should serve both the attorney inexperienced with Family Division practice, as well as the attorney seeking refresher courses in one or more particular areas. 150

87. Recommendation: The Court Study Committee recommends that the Board of Judges of the D.C. Superior Court seriously examine the adoption of competency standards for attorneys receiving appointments in the Superior Court Family Division. Enrollment in periodic continuing legal education courses could be one criterion for assuring the competency of counsel receiving Court appointments. (The Superior Court might wish to approach the issue more generically so that any attorney who appears on the Court's appointment lists is known to have certain direct knowledge of the subject areas relating to such appointments.) 150
88. Recommendation: The Court Study Committee endorses the D.C. Bar and D.C. Superior Court CJA Committees' proposals for reform of the criminal defense appointment system, and other related improvements. We also urge these committees to address the serious issue of representation of parents and children in neglect cases. 153
89. Recommendation: The Court Study Committee recommends that the existing Superior Court student practice rule be amended to permit law students to represent children charged with limited classes of felonies. 154
90. Recommendation: The Court Study Committee recommends that the current CJA payment schedule for juvenile cases be revised upward to reflect current market fees obtainable from private litigants for similar work. 156
91. Recommendation: The Court Study Committee recommends that an area of the courthouse, more suitable than the lawyers lounge, be set aside so that attorneys who are waiting for juvenile and neglect cases to be called can spend their time more productively. The area should contain several non-pay telephones to be used by attorneys for local calls. The Court library should also be open to the private bar just as it is to the U.S. Attorney's staff. 157

92. Recommendation: The Court Study Committee supports the reforms proposed by the CJA Committee of the D.C. Superior Court to remove the Court from any direct involvement in the approval and processing of CJA payment vouchers for attorneys in Juvenile and PINS cases and recommends immediate development and use of a simpler voucher form and procedure. 158

93. Recommendation: The Court Study Committee recommends that the C.J.A. System contract with area law schools or legal aid organization society to provide students to perform investigations in adult and juvenile cases. 159

94. Recommendation: The Court Study Committee further supports the thrust of the Braman Committee recommendation to provide that attorneys compensated under the C.J.A. program may procure investigative services within certain guidelines without prior Court approval. 160

95. Recommendation: The Court Study Committee further recommends that the current C.J.A. payment schedule for investigators be revised to reflect current market fees obtainable from private litigants for similar work. 160
 (It is the Committee's experience that a qualified investigator costs in the range of \$10 per hour.)

96. Recommendation: The Court Study Committee recommends that the C.J.A. System contract with area social work graduate schools to provide social work services in selected juvenile cases. Included should be independent evaluations of the services the child requires. 162

97. Recommendation: The Court Study Committee recommends that the District of Columbia Council enact legislation providing that attorneys handling child neglect cases be compensated at a rate similar to the scale for delinquency cases under the CJA program. 165

98. Recommendation: The Court Study Committee recommends that the appointment process for neglect cases be controlled by the same system proposed by the Superior Court Criminal Justice Act Committee for criminal and delinquency cases. 166
99. Recommendation: The Court Study Committee recommends that social service and investigation services be made available to attorneys representing parents and children in neglect cases. 165
100. Recommendation: The Court Study Committee recommends that the training programs devised for attorneys accepting appointments in neglect cases include special sections on family dynamics and child development. 165
101. Recommendation: The Court Study Committee recommends that the Superior Court Family Division be treated on a par with the other Divisions of the Court with respect to the assignment of judges and that no judges be exempted from sitting in the Family Division. 169
102. Recommendation: The Court Study Committee recommends that the Superior Court Family Division initiate a modified individual calendar system in juvenile delinquency and neglect cases on a pilot basis. 170
103. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that judges of the D.C. Courts receive comprehensive pre-service training before assuming normal judicial duties. 171
104. Recommendation: The Court Study Committee recommends that the Superior Court adopt rules providing that judges upon appointment to the Court must participate in a substantial judicial orientation program before performing official duties. 171

105. Recommendation: The Court Study Committee recommends that the Superior Court Rules provide that each Division offer specific training to judges newly assigned to the Division and periodically throughout the judge's assignment to that Division. 171
106. Recommendation: The Court Study Committee recommends that staff and resources be allocated to the orientation and training function of the Superior Court. 171
107. Recommendation: The Court Study Committee recommends that all judges entering the Superior Court Court Family Division be provided with a reference book containing the relevant D.C. Code sections, with Court Rules which reflect current statutory requirements, with a Bench Book that can be utilized as a reference, and with ongoing information concerning resources available within the D.C. community. 173
- The Committee also urges the Court Executive to assure that every judge of the D.C. Superior Court and D.C. Court of Appeals routinely receives copies of legislative enactments of the D.C. Council.
108. Recommendation: The Court Study Committee recommends that the Family Division Clerk's Office establish a format and procedure for social files, and that it routinely check the files to assure compliance with this format. It would appear prudent to consult closely with judges, Social Services Division personnel, and others in developing a "Social file" format. 173
109. Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court assign to the Administrative Judge of the Family Division the responsibilities of identifying and assuring the collection and dissemination of data, information and materials necessary for performance of Family Division functions, coordination of training for Family Division judges, and coordinating the identification and resolution of problems with agencies external to the Court on Family Division matters. The Office of the Court Executive and/or the Clerk of the Superior Court should be responsible for administrative support in connection with this recommendation. 175

INTRODUCTION

The report which follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the child neglect and juvenile delinquency areas. The Court Study Committee's basic purpose has been to determine how the 1970 D.C. Court Reform and Criminal Procedures Act has worked in actual practice, and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. Court System leadership, and to the community. The D.C. Court System Study Committee is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at the time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Child Neglect and Juvenile Delinquency Subcommittee of the Court Study Committee was responsible for the principal investigative and analytic work leading to the findings and recommendations in this area. Subcommittee members Mary Ann Stein, chair, Wallace Mlyniec, Marty Beyer, and Mark W. Foster, were assisted in the drafting of the report by staff members of the Court Study Committee, Samuel F. Harahan, staff director, and Joe Kaiser, court management analyst.

The Court Study Committee in preparing the report which follows conducted interviews with a number of judges of the D.C. Superior Court, other court staff including both

Family Division and Social Services Division personnel, as well as with attorneys and others experienced in areas covered by the report. The appendices to this report contains a list of persons interviewed and references consulted.

The D.C. Court System Study Committee, in examining the implementation of the 1970 D.C. Court Reform Act in the juvenile and neglect areas utilized several separate analyses. A descriptive assessment of the processing of juvenile cases by the D.C. Superior Court in 1977 was undertaken at Committee direction by an independent consultant.¹ The court delay descriptive study² of the Superior Court, Family Division commissioned by the Superior Court leadership was consulted, and the monthly and annual statistical reports of the Superior Court Family Division were examined.³ Detailed juvenile delinquency and abuse and neglect caseflow materials and flow charts developed by the Committee were also utilized.

The Court Study Committee examined the reports of the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project. These proposed policy standards offer a national perspective for many of the

¹ Burt, M. A Descriptive Assessment of the Processing of Juvenile Cases in the District of Columbia Superior Court, October 1979. This document is referred to throughout this report as the Burt Study.

² District of Columbia Court Delay Reduction Project, Whittier College School of Law, 1979-80, interim descriptive reports referred to throughout as Whittier Study.

³ Superior Court Family Division monthly and annual statistical reports referred to throughout this report as Court Statistical Report(s).

procedural, policy and juvenile caseflow issues faced by the D.C. Superior Court. The Court Study Committee concluded that the IJA/ABA juvenile justice standards offer substantial guidance for the handling and disposition of children and juveniles coming before the D.C. Superior Court Family Division. Where appropriate, reference to the IJA/ABA juvenile justice standards is offered in the text which follows.*

The Committee had the benefit of all historical records and files of the 1966-70 Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit. That Committee, chaired by Newell W. Ellison, employed a professional court management study team to examine the local courts and related agencies during the 1966-70 period. The materials of the Ellison Committee have been a useful resource in understanding the operation of the courts of the District of Columbia during the 1960's. It should be noted, however, that the Ellison Committee reports did not address the child neglect area, and that while substantial attention was directed at the juvenile court, the post-1970 structure and operation of the Superior Court Family Division are sufficiently different to make accurate comparison with the old Juvenile Court difficult at best.

* As an aid to the reader the IJA/ABA Standards relating to the Interim Status of Juveniles are included as Appendix A of this report.

The report which follows is divided into four sections. The first section offers a general comparison of the juvenile court system before and after the implementation of the 1970 D.C. Court Reform Act. Section Two examines the operation of the child neglect area by the Family Division of the D.C. Superior Court. Section Three addresses the Court's handling of the juvenile delinquency area including both pre-trial and post-dispositional roles and operations. Section Four of the Report addresses those aspects of the Court's juvenile delinquency and child neglect operations which are generally common to both, namely the functions of the judiciary, defense counsel, and prosecuting counsel in the Superior Court Family Division.

The Court Study Committee is very appreciative of the interest and cooperation extended by all who were contacted in connection with the preparation of this report. We wish in particular to thank Chief Judge H. Carl Moultrie I of the Superior Court, former Superior Court Chief Judge Harold H. Greene, and Judges Joyce Hens Green and George Goodrich, the past and present Administrative Judge of the Family Division, for their cooperation and support of our inquiries.

SECTION I SUMMARY COMPARISON OF THE D.C. JUVENILE
COURT SYSTEM BEFORE AND AFTER THE 1970
D.C. COURT REFORM ACT.

Prior to the February 1, 1971 implementation of the 1970 D.C. Court Reform Act, all juvenile delinquency, child neglect and children in need of supervision matters were handled in the Juvenile Court of the District of Columbia. This three judge court also exercised jurisdiction over cases of paternity, non-support, violations of compulsory school attendance and child labor laws.⁵ The Juvenile Court had its own probation staff, clerk's office, hearing officers, bailiffs and related administrative personnel. The U.S. Marshal's Service provided support to the Juvenile Court as did the Office of the Corporation Counsel, the Legal Aid Agency, the Department of Public Welfare and other organizations.

A brief comparison of the Juvenile Court in the District of Columbia as described in the May, 1970 Ellison Committee Report with the structure and operation of the Family Division of the D.C. Superior Court in the juvenile and child neglect areas following the 1970 statutory reform reveals many important changes and improvements since 1970. The large

⁵ Committee on the Administration of Justice of the Judicial Council. Report of the Court Management Study Submitted to the D.C. Courts and Related Agencies. Committee on the District of Columbia, United States Senate, May 1970. Part 2. pp. 159; referred to throughout this report as the Ellison Committee Report.

number of recommendations for improvement contained in this Child Neglect and Juvenile Delinquency Report affirms this Committee's view, however, that substantial additional reform is yet necessary for the administration of juvenile justice in this community to reach its full potential.

Statistically the overall workload of the D.C. Courts in the juvenile and child neglect areas has decreased just over ten percent in the period 1969 to 1979. According to the Ellison Committee Report, in fiscal year 1969 a total of 6,875 juvenile cases were referred to the D.C. Juvenile Court, of which 89 percent were juvenile delinquency cases.⁶ In 1979 the number of juvenile and neglect cases referred to the Superior Court Family Division was 6,039.⁷ While the mix of case types within these totals have in some instances shifted substantially, overall the volume of juvenile and neglect cases handled by the D.C. Courts has remained relatively stable during the past ten years.

The May 1970, Ellison Committee Report on the D.C. Juvenile Court detailed serious deficiencies in a number of areas including:

- children held in detention up to four months before any charges were filed with the Juvenile Court;⁸

⁶ Ibid., Part 2, p. 160.

⁷ District of Columbia Courts, 1979 Annual Report, Washington, D.C., pg. 64, 67. (Juvenile cases 1979-6,673; neglect cases 1979-466.)

⁸ Op. cit. Ellison, p. 162.

- children who had not been detained having to wait up to a year before appearing before a judge for an initial hearing on the charges against them;⁹
- serious delays in appointing counsel to represent children in juvenile proceedings;
- absence of standardized procedures and rules within the Juvenile Court;
- absence of any meaningful social service role in the intake and disposition of juvenile cases.
- the basic management and organizational philosophy of the Juvenile Court;

To a considerable degree the Superior Court Family Division has, through implementation of the 1970 D.C. Court Reform Act, overcome many of the deficiencies existing under the old D.C. Juvenile Court system. Where before the Court Reform Act the detention hearing in juvenile cases was held separate from the probable cause/initial hearing on the charges against the juvenile, now these hearings are combined. This one change has meant, among other things, that the Office of the Corporation Counsel now has to make a decision to petition, or not petition, the detained juvenile within less than 24 hours of the juvenile's arrest, whereas before the 1970 Act this step could and did take up to four months. The Office of the Corporation Counsel has successfully implemented this provision of the statute, and petitioning decisions in juvenile

⁹ Ibid., p. 162.

cases in the District of Columbia are routinely made within the time allowed. The Superior Court leadership within the past two years has adopted a further reform in this area in that any youth arrested during normal Court hours is now brought directly to Court for an initial judicial hearing. For juveniles who are not detained upon arrest the 1970 Act provides that a petitioning decision must be made within seven days of arrest, and this is now also routinely being done.

The Ellison Committee Report detailed a serious role conception problem on the part of the Office of the Corporation Counsel in the Juvenile Court. Noting that the role confusion stemmed partially from the evolving role of the Court itself in the juvenile sphere, the Ellison Committee recommended that the Corporation Counsel assume, . . . "a true prosecutor's function at every stage in the juvenile case prior to disposition."¹⁰ The Court Study Committee takes note of several areas in which the Corporation Counsel assumes a more standard prosecutor's function, and areas where such a role is inappropriate, e.g., neglect.

Another serious problem area under the former D.C. Juvenile Court operation which has been ameliorated through implementation of the 1970 Court Reform Act was the delay in appointing counsel to represent juveniles. In many instances, according to the Ellison Committee Report, defense counsel was

¹⁰ Ibid, p. 203.

not appointed until the initial Court hearing on the charge(s) against the juvenile, even though this hearing might not be held until several months after the juvenile's arrest. Thus before 1971 in the District of Columbia youths routinely could be held in detention status for lengthy periods of time without advice of counsel, and without formal charges having been filed with the Court. Today, in the Superior Court Family Division, counsel in delinquency cases is routinely appointed at or before the initial judicial appearance, and this hearing occurs either the day following the youth's arrest in detention cases or within a week of the arrest in cases where the youth is not initially detained.

A related problem under the former juvenile court system was the lack of continuity of counsel in individual cases.¹¹ Before 1971 it was not at all unusual for a youth in a juvenile proceeding to be assigned different counsel at different phases of the proceeding. This fragmented representation approach is no longer employed, and in the D.C. Superior Court youth have a single attorney appointed to handle all phases of their case. This continuity of defense representation however is not found in child neglect cases in the Superior Court Family Division in which it is frequently the case for different attorneys to be appointed at different points in the Court process. Nor is there continuity for an

¹¹ Ibid. p. 185.

alleged delinquent with more than one charge at the same or different times; such a juvenile may have as many attorneys as charges. (A later section of this report outlines some of the Court Study Committee's concerns about the adequacy of appointed counsel and other counsel related problems in juvenile and child neglect cases.)

Another area of deficiency in the former D.C. Juvenile Court system no longer present under the Superior Court, was the lack of Court responsibility for detained youth prior to the initial Court appearance. With the implementation of the 1970 D.C. Court Reform Act, the Superior Court promulgated general detention criteria to be applied by Court Social Services Division Intake staff who function 24 hours a day year-round, at the Court, and at the City's juvenile detention facility, the Receiving Home for Children of the Department of Human Services.

The juvenile/neglect social service function underwent substantial change as a result of implementation of the 1970 D.C. Court Reform Act. Whereas, according to the Ellison Committee Report, in for former D.C. Juvenile Court in less than 20 percent of all juvenile cases was the disposition hearing continued to a date beyond the trial so that a social study could be undertaken, such studies, now are ordered by judges routinely.¹² Social Services Division awareness of

¹² Ibid., p. 195.

dispositional resources and alternative services in the general community has also improved with the implementation of the 1970 D.C. Court Reform Act. The Ellison Committee Report noted that the former Juvenile Court Social Service Division lacked any systemized orientation in this direction,¹³ and while further reforms are needed, it appears to the Court study Committee that the Superior Court has addressed this concern directly.

The final, and perhaps major, deficiency of the former D.C. Juvenile Court to be mentioned in this brief retrospective was the total lack of any management orientation.¹⁴ The Ellison Committee Report stated that . . . "the primary cause of the Court's delays are the administrative deficiencies, both in the areas of calendar management and in overall administration."¹⁵ Without enumerating the entire set of problems in this area, the Ellison Committee Report did note that the Juvenile Court operated 16 separate calendars and had no consistent juvenile rules or procedures, no continuance policies or consistent practices, no consistent motions procedures, and no system of keeping accurate records about the work of the Court.

The 1970 D.C. Court Reform Act addressed a number of the generic administrative deficiencies in the former D.C.

¹³ Ibid., p. 196.

¹⁴ Ibid., p. 211.

¹⁵ Ibid., p. 157.

Juvenile Court including centralizing authority in the Chief Judge of the Superior Court, eliminating multiple calendars, combining hearings, instituting consistent motions and continuance policies, adopting a set of detailed court rules for the juvenile area, and other steps. It should be emphasized, however, that to a considerable degree the 1970 D.C. Court Reform Act was not self-executing. Passage of the Act provided the impetus or climate for reform but often not the specific guides to bring about the needed improvement. The vigorous and forceful leadership of the first Chief Judge of the Superior Court, the Honorable Harold H. Greene, contributed significantly to improving the juvenile justice process in the District of Columbia during the 1971-1978 period. Chief Judge Greene evidenced considerable personal involvement and interest in the Family Division through such activities as assigning himself to the Family Division calendar control court when case backlogs were particularly high, and assigning to himself some of the more complex juvenile cases such as the In Re Savoy proceedings.

Within the past two years additional attention has been directed at improving the juvenile case calendaring procedures and developing an automated case tracking information systems capability. These steps should further contribute to overcoming the serious administrative problems which were a part of the former D.C. Juvenile Court.

It should be noted again that while the Court Study Committee examined improvements made in the ways the D.C.

Courts handle child neglect matters, the May 1970 Ellison Committee Report did not separately analyze this area, and the Committee was unable to locate any other systematic study of neglect cases in the D.C. Courts prior to court reorganization.

SECTION II CHILD NEGLECT AND THE D.C. COURT SYSTEM

As noted in the previous section the Court Study Committee was unable to locate any comparative information on the D.C. Court system's handling of child neglect before and after the passage of the 1970 D.C. Court Reform Act. Therefore the section which follows is limited to an examination of the critically important area of child neglect since February 1, 1971, when the D.C. Superior Court was created.

A. Entry of Child Neglect Cases into the D.C. Superior Court

There are two avenues by which a child neglect case enters the D.C. Superior Court. The first is through the police. These are generally emergency cases, cases of child abuse or immediate danger in which a child has been removed from his home and taken either to the hospital or to facilities of the Family Services Administration of the Department of Human Services (DHS). In these emergency cases, an initial court hearing is statutorily mandated within 24 hours unless

the child is picked up on Saturday or Sunday, in which instance the initial Court hearing may be held within 48 hours.

The second method by which child neglect cases enter the D.C. Superior Court is through the Child Protective Services Division of the Department of Human Services. These cases are generally called "community cases" and involve child neglect that does not qualify as an immediate danger to the child. The legal requirements respecting these cases and the filing of petitions are as follows: when the child has been taken into care with the agreement of the parent, the Department of Human Services Child Protective Services Division (CPSD) must either return the child to the home or request a petition within 90 days. In other cases where the child is not in care, or where the child has been voluntarily relinquished to the Department of Human Services by the parent, there is no requirement that a petition be filed. For those cases referred by the Department of Human Services for a petition the D.C. Code is technically unclear, but the intent of the statute appears to be that the Corporation Counsel is required to file a petition or to no-petition the case within 7 days of referral by DHS. (DCC § 16-2305.)

The statutory deadlines for petitioning and initial hearings in child neglect cases are being met by the Office of the Corporation Counsel and by the Superior Court in emergency cases referred by the Police, but they are not being met in community cases. Available statistics show that cases of

non-voluntary removal from the home routinely are being petitioned and an initial hearing held within the requisite 24 to 48 hour period.¹⁶ A substantial backlog of community neglect cases have been referred by the Child Protective Service Division (CPSD) of the Department of Human Services. The Office of the Corporation Counsel is reported in the Whittier Court Delay Project materials to have represented that it has "an unspecified period of time" to act on these cases. Of a sample of 55 closed neglect cases reviewed by the Whittier Study, nearly 25% were held for "an unspecified period of time" with lapse times of 15 to 240 days.¹⁷

The Corporation Counsel informed the Committee that it has eliminated most of the community case neglect backlog in recent months. The Committee applauds this development by the Corporation Counsel and urges that office to continue their efforts to keep these cases current.

¹⁶ These time periods meet the Standards of the IJA/ABA Relating to Abuse and Neglect (4.3). The Court Study Committee notes that the IJA/ABA Abuse and Neglect standards have been the subject of intense debate. The Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22, is in large measure modeled on an earlier draft of these standards. It incorporates some of the same general principles, specifically that intervention should be designed: (1) to preserve families where possible; (2) to promote a child's need for a continuous stable living arrangement; (3) and to assure that all agencies involved in intervention should be held accountable for all their actions. Major differences are that the District of Columbia has a broader definition of child neglect than that proposed by the standards and does not have the same time limitations.

¹⁷ Closed cases were defined in the Whittier Team as cases that had been no-petitioned, stipulated, dismissed, or adjudicated.

The consequences of failure to act promptly on CPSPD community child neglect cases are several and not widely understood. First, the District of Columbia loses federal matching funds of 50% for the board and care cost it incurs for those children whose cases are not judicially reviewed within 6 months of entry into public agency care. (At present that loss amounts to several million dollars per year in the District of Columbia.¹⁸) Second, there is no accountability for children whose cases are not petitioned, despite the clear intent of the District of Columbia Council in enacting the legislation that cases of all children kept out of their homes be subject to external review.¹⁹ Failure to review cases contributes to excessively lengthy stays which also compound the expense to the District Government.²⁰

Recommendation: The Court Study Committee recommends that the D.C. Code Section 16-2305 be amended to make explicit the requirement that child neglect cases referred by the Department of Human Services be petitioned

¹⁸ Foster care board and care costs range from \$3,036 to \$30,000 per year per child. The Committee notes the responsibility for the loss of federal reimbursement is shared by Department of Human Services (DHS) and the Corporation Counsel which does not always make timely requests for petitions. Additionally we were informed that DHS does not make timely requests for reimbursement in all cases.

¹⁹ See the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

²⁰ Studies in other jurisdictions have demonstrated that external review, including judicial review, has a positive impact on reducing time in care. This is of particular concern in the District of Columbia where the average stay in foster care is 7.3 years.

within seven days of referral to the Corporation Counsel. Pending legislative amendment in this regard, the Committee urges the Corporation Counsel to adopt a policy of making neglect petitioning decisions within a seven day period of referral.

The child neglect case petitioning rate, according to statistics collected by the Corporation Counsel's office, is 85.9%. Court statistics show the usual monthly petitioning rate for FY 79 to be over 90%. It is difficult in neglect cases to assess these figures. The fact that only 14% of petitioned cases go to trial while 14% are dismissed and 74% are resolved by stipulation could indicate that some petitioned cases lack merit and that many could be resolved without judicial intervention. Some observers believe that the legislative intent of the Prevention of Child Abuse and Neglect Act was that more cases, be handled administratively instead of being processed in Court. That intent, in the view of the Court Study Committee, is not being realized.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division and the Department of Human Services collect data on those petitioned neglect cases which are resolved by dismissal or stipulation in order to ascertain whether some cases could be diverted at, or prior to, petitioning.

B. Initial Hearing

All petitioned child neglect cases are scheduled for an initial or shelter care hearing before a judge in the Superior Court Family Division New Referrals Court. The judge

determines the need for shelter care and whether probable cause exists.²¹ Shelter care decision requirements are contained in D.C. Code § 16-2310, and Superior Court Neglect Rule 5(c). The Prevention of Child Abuse and Neglect Act of 1977 added a requirement that the Court must determine that no appropriate alternative is available to protect the child in his own home. The criteria for shelter care stated in the Superior Court rules are very broad and focus on parental conduct and conditions. The 1977 statutory requirement concerning alternatives that protect the child in the home is largely ignored, and children are fairly routinely ordered to shelter care in the District of Columbia.

No statistics are kept by the Superior Court on the results of initial hearings in child neglect cases. However, sources note that the need for shelter care and hence probable cause is nearly always found in child neglect cases the Corporation Counsel decides to petition. Superior Court Social Services Division staff report that in child abuse cases in which they are responsible for investigating and making placement recommendations, the recommendation is nearly always for shelter care. If there is a 5 day hold,²² they may have time

²¹ Superior Court Neglect Rule 6(b) provides that a finding that shelter care is necessary will constitute a finding of probable cause.

²² A "five-day hold" is a judicial order continuing the initial Court hearing for any purpose except determining the appropriateness of shelter care.

to investigate a relative of the child as a placement alternative. Social Services Division staff interviewed explained that they consider home placement too risky at this point and usually do not seek to make any change pending trial or stipulation, despite the fact that approximately half the children return home when the case is closed by either of these methods. Review of the shelter care order is seldom held prior to trial.

The IJA/ABA standards relating to abuse and neglect permit shelter care only when the judge determines that:

custody of the child with his/her parent(s) or other such caretaker(s) named in the petition would create an imminent substantial risk of death or serious bodily injury to the child, and no provision of services or other arrangement is available which would adequately safeguard the child in such custody against such risk;

the conditions of custody away from the child's parent(s) or other such caretaker(s) are adequate to safeguard his/her physical and emotional well-being (including, without limitation, direction by the court to provide emergency medical care to the child if necessary to prevent the risk found pursuant to subsection (above)). . .

Recommendation: The Court Study Committee recommends that the Superior Court vigorously enforce the statutory requirement that it determine that no appropriate alternative to shelter placement is available that can protect a child alleged to be neglected before entering a shelter care order.

Recommendation: The Court Study Committee recommends that Superior Court Neglect Rule 5(c) on criteria for shelter care in neglect cases be amended to reflect the statutory requirement referred to in the preceding

recommendation and to require evidence of serious danger to the child. The criteria presently enumerated in Rule 5(c) relate almost exclusively to parental conduct.

When a child is placed in shelter care, D.C. Code § 16-2310(d) requires that the parent shall be allowed visitation at least weekly unless such visitation would be detrimental to the child. In these cases the Superior Court is to order no visitation or prescribe an alternate schedule. In fact, the Court Study Committee found this statutory provision is generally ignored and the value and importance of parental visitation is overlooked by judges, lawyers and social workers despite definitive research findings that visitation is the single most important factor in reuniting families and is critical to the health and welfare of children in foster care.²³

The IJA/ABA standards relating to abuse and neglect provide that when the court authorizes emergency temporary custody (shelter care):

the child's parent(s) or other such person(s) named in the petition . . . be provided opportunity to visit with the child at least every day for the duration of custody pursuant to this Part (including without limitation the provision of transportation for the parent(s) or other such caretaker(s) unless such visits, even if supervised, would be seriously harmful to the child (due account being given, among other considerations, to the child's wishes regarding visits).

²³ Fanshel, David and Eugene B. Shinn, Children in Foster Care - A longitudinal Investigation. Columbia University Press, 1978.

In the District of Columbia the Superior Court's extensive use of shelter care and failure to assure visitation, combined with the practice of very infrequent judicial review of child neglect cases between the initial hearing and the fact finding hearing, make preservation or rehabilitation of families more difficult and cause unnecessary emotional pain to children and their families.

The Court Study Committee is cognizant of the sincere concern expressed by Superior Court Family Division Judges with regard to the issue of parental visitation in suspected child neglect cases. The Committee is of the strong view however that visitation should be curtailed only in extreme or rare instances. When parents appear to exhibit threatening or coercive conduct visits can be supervised by DHS or by Court Social Service Division personnel, and any detrimental effect on the child promptly reported to the judge who can then modify as warranted the visitation order, or take other action regarding the parental conduct as appropriate.

Recommendation: The Court Study Committee recommends that the Superior Court enforce the statutory requirement for weekly visitation during the shelter care of allegedly neglected children. Shelter care orders should specify the visitation schedule and responsibilities. Administrative convenience should not be accepted as a reason for less frequent visitation. Judicial review of the visitation order and its implementation should be a requisite element of the status hearing proposed in the following recommendation.

C. Status Hearings

Generally in child neglect cases lawyers for all sides, the government, parents, and the child do not know until the morning of the trial whether the case will go to trial or be subject to a stipulation. The Whittier Study reported that status calls are utilized in only 12% of child neglect cases, and in only one out of seven cases in which a hearing was held was the case disposed of as a result of the status hearing.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division establish a Rule requiring a status hearing in every neglect case within 14 Court days of the initial hearing. The purpose of the hearing should be exploration of the possibility of stipulation or dismissal, completion of discovery and motions, and consideration of issues relating to trial. The Court Rule should also require that when a child is in shelter care, the status hearing will include review of the need for continued shelter care and of the visitation order and its implementation.

D. Fact Finding Hearings

Fact finding hearings are scheduled approximately 4-6 weeks after the initial hearing in child neglect cases in the Superior Court Family Division. In fact, they are continued often and generally held later than the 4-6 weeks period initially scheduled. The Whittier Study sample showed that of 5 child neglect trials held, a median of 92 days had passed from the date of complaint to the date of trial, with the range being 38-113 days. Sixty-two trial dates were set

for 43 petitioned cases, indicating 19 continuances in these 43 cases. While the Whittier data shed no light on the availability of judges for neglect trials, it can be assumed that judicial shortages are more of a problem in child neglect cases than in juvenile cases since neglect cases normally receive lowest priority on the calendar.

The IJA/ABA Standards relating to Abuse and Neglect set very tight time limits for trying neglect cases. When the child is in custody the standards recommend that the hearing be convened within 8 working days, except the parent or child can be granted a continuance of no more than 6 days.

The Court Study Committee is aware that some child neglect cases are continued pending the outcome of a related criminal proceeding involving the parent(s). Some jurisdictions such as California, have adopted appropriate statutes and court rules granting the parent(s) limited immunity in the criminal case for testimony offered in the civil child neglect case. The advantage of this approach over current procedure and statutes in the District of Columbia is that the child and family are not effectively penalized by the civil case being indefinitely continued until the related criminal proceeding concludes.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide limited immunity in a criminal cases for testimony by parents or other relevant parties in civil child neglect proceedings.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule requiring that fact finding hearings be scheduled in all neglect cases within 21 court days of petitioning. The Committee recognizes that dismissal is not an alternative in neglect cases. However, we are persuaded that the Court should establish stringent time goals and seek to enforce them vigorously given the serious impact delay in these cases has on the children and the families.

Recommendation: The Court Study Committee recommends that continuances for fact finding hearings in neglect cases be granted sparingly and only in exceptional circumstances and for no longer than 7 court days. Fact finding hearings which are continued because of judicial unavailability should be held the next court day and given priority on the calendar.

E. Stipulations

A far more common way to dispose of child neglect cases than through full fact finding and disposition hearings in the D.C. Superior Court is the stipulated agreement between parties which is submitted to a judge for approval. The stipulation will include an admission by the parent that the case falls within the jurisdiction of the Superior Court and usually contains an agreed-upon interim plan for the care of the child and services in which the family is to participate. A further disposition hearing may be set, or the disposition may be contained in the agreement.

Despite the fact that stipulations are utilized in 74% of petitioned child neglect cases, no Court Rules exist concerning their use or content.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule governing stipulations in neglect cases and requiring that they include a plan that addresses all the matters delineated in D.C. Code § 16-2319(c), regarding services, time estimates, criteria for future decisions, and specific information on placements.

Recommendation: The Court Study Committee recommends that the Superior Court adopt a Rule for the approval of stipulations in neglect cases that requires the judge to ascertain that the parents made intelligent and knowing agreement after receiving effective assistance of counsel. The Committee takes cognizance of both the past effective use of hearing commissioners in the mental health and domestic relations areas of the Superior Court, and the recent retirement of the Family Division hearing commissioner in the juvenile area. Consideration should be given by the Court to expanding the duties and authority of the juvenile hearing commissioner to include acting on uncontested continuances, and recommending action in cases involving stipulations, consent decrees, and other similar matters short of trial.

F. Disposition

The D.C. Code and the Rules of the D.C. Superior Court contain no time requirements for disposition hearings in child neglect cases. Disposition hearings in such cases are generally scheduled 30-60 days after the fact finding hearing has been concluded. Continuances frequently occur. No statistics are available regarding actual disposition schedules or delays, however. A 1975 study of neglect cases in the Superior Court by Burt Associates reported that 26% of neglect/abuse cases went from petition to disposition in less than 90 days, 29% in 90 to 180 days, and 45% in more than 180 days.

Superior Court staff interviewed by the Court Study Committee claim the situation has improved, but were unable to provide statistics to the Committee in this regard.

D.C. Code § 16-2319 requires that a pre-disposition report be submitted prior to the disposition of child neglect cases; this can be the social investigation report and plan discussed below under the Social Services-Subsection K - part of this report on neglect cases. The statute requires that the report contain certain specific elements, but the Court study Committee was informed that there is no consistent compliance.

The Superior Court Social Services Division and the Department of Human Services Child Protective Services Division both have statutory requirements to perform an immediate social investigation and to prepare a social plan prior to the fact-finding hearing. While the Social Services Division is reported to have their reports completed within the requisite time limits the Department of Human Services is not complying with the statute in this regard. The Committee is troubled by the delays in completing the social investigations and the adverse effect this in turn has on the timing of the disposition hearings.

The IJA/ABA standards require that disposition hearings in child neglect cases be convened no later than 2 days after the fact finding hearing when the child is in custody. A continuance of no more than 6 working days may be

granted on motion of the child or parent. The Court Study Committee notes that a substantial number of disposition hearings in neglect cases are not taking place promptly after the factfinding hearing despite the fact that at least with regard to the cases involving the Court Social Services Division, the social plans are available as of the date of the factfinding hearing. (See IJA/ABA Standards Relating to Abuse and Neglect 6.1).

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule requiring the convening of disposition hearings in child neglect cases no later than 10 calendar days after the fact finding hearings. The time limit recommended takes into account current D.C. Law requiring that predisposition reports be prepared and given to counsel five days prior to the factfinding hearing. The Committee supports the existing statute in this regard.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule for giving notice and an opportunity to be heard to an agency ordered by the Court to provide a service pursuant to D.C. Code § 16-2320(5) if such agency is not already before the Court. While the Code gives the Court authority to order agencies to provide services, the relevant agency (e.g. D.C. Public Schools) is not always a party to the court proceedings so that rules must be adopted to implement the Court's power.

Dispositions vesting legal custody of a child in a department, agency or institution pursuant to § 16-2322 are limited to 2 years and may be extended for additional periods of 1 year upon motion if, after notice and hearing, the Superior

Court Family Division Judge finds the extension is necessary to safeguard the child's welfare. Many cases, however, have been found in which children remain in agency custody well beyond the 2 years with no extensions having been granted, a plain violation of the applicable statute. Another substantial group of cases exist where extensions were granted ex parte also in violation of the law. Very little scrutiny is given these cases and they became part of foster care "drift". (See footnote #26).

Recommendation: The Court Study Committee recommends that the Superior Court Family Division enforce the provision of D.C. Code § 16-2322 which provides that disposition orders in child neglect cases can be extended only after notice to parties and a Court hearing. The Family Division Clerk's Office should be responsible for scheduling the review hearings and sending notice to all parties.

G. Reviews

The District of Columbia Code § 16-2323 provides that all disposition orders must be reviewed judicially by the Superior Court after a child has been adjudicated neglected.²⁴ These reviews are to be held at hearings at least every 6 months for a child under the age of 6 years who is committed to the custody of an agency, department, or institution. The same 6 month review applies to a child of any age who is committed to the custody of an agency, department or institution but who has not been committed for longer than 2 years.

²⁴ Unlike juvenile cases, the D.C. Code is very explicit on this neglect review responsibility.

Review hearings are to be held at least every year for all other children. The Committee finds that the requirements of the D.C. Code are not being met. The Department of Human Services and the Superior Court continue to schedule child neglect cases for ex parte reviews rather than review hearings as required by law.²⁵ Moreover, a number of children appear to be "lost in the system" and an examination of the Superior Court's computer print-outs indicates many cases of children have not been reviewed at all for more than two years. The Whittier Study identified 176 child neglect cases in which the scheduled review was not held because reports had not been received. The majority of these cases had reviews scheduled for some date during 1979. Some had review dates also scheduled in 1977 and 1978 which also had not been held.

In addition to the time problems noted with respect to review hearings and the question of ex parte vs. full Court hearings, the Court Study Committee notes that review hearings are frequently pro forma exercises which last only a matter of minutes. Lack of continuity of attorneys and judges, as well as the general paucity of information included in the social report submitted to the judge at the review contributes to

²⁵ The Order submitted to the judge with the date and type of review is actually prepared by DHS and not Court staff, although this clearly is more appropriately done by the Family Division Clerk. Further, the Committee is informed the Family Division Clerk at one point agreed to assume this responsibility and set cases for review hearings according to the schedule mandated in D.C. Code § 16-2323.

this problem. It is the position of this Committee that the Superior Court has a statutory obligation to conduct meaningful reviews in child neglect cases, and that these reviews should meet the requirements of the relevant statutes. At a minimum the Court should include more than a superficial inquiry into each of the factors set forth in D.C. Code § 16-2323(b). Data available indicates that in the District of Columbia children committed as a result of neglect proceedings frequently stay in care for periods of many years despite the intent that foster care be a temporary measure. Judges should issue orders in child neglect matters that assure the long term interest of the child will be met, rather than endorsing the status quo. The Court Study Committee concludes that the Superior Court Family Division is not meeting its responsibility to neglected children in this important area.²⁶

IJA/ABA Standard 6.5 relating to abuse and neglect emphasizes the temporary nature of placements and the importance of making every effort to facilitate the return home of the child as quickly as possible. The standard provides for reviews of the status of all children under Court supervision at least every 6 months in a formal hearing.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division Clerk's Office assume the administrative leadership for scheduling child neglect

²⁶ A draft D.C. Auditor report shows that the median time in foster care in the District of Columbia is 7.3 years, and more than 23% of the children have been in care longer than 10 years.

review hearings according to the statutory mandate of D.C. Code § 16-2323. The intent and language of the statute clearly require full Court hearings at specified intervals.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division enforce the statutory requirements concerning the review reports that are to be submitted to the Court in child neglect cases. Accordingly, judges in the Superior Court Family Division should insist that factual information on services, visitation, parental actions, and future plans be submitted, to enable the Court to perform its review function in a meaningful fashion.

Recommendation: The Court Study Committee recommends that the Superior Court utilize its powers, including those of contempt, to require social workers and attorneys of record in child neglect cases to file reports on time and to attend disposition and review hearings.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt and enforce a Rule limiting the continuance of review hearings in child neglect cases to a maximum of 5 Court days except in exceptional circumstances. The Rule should require notice of a request for continuance to counsel for all parties and an opportunity to contest the continuance. The Court should take care to ensure that exceptional circumstances do not become the norm.

H. Termination of Parent-Child Relationship

The intent of the D.C. Prevention of Child Abuse and Neglect Act is that all children's rights to permanency in family life be assured. The Act provides that motions for termination of parental rights to free children for adoptions may be filed 6 months after a finding of neglect and Court commitment to a person other than the parent or guardian. In

cases of abandonment, the motions may be made at the disposition hearing. The law also mandates the Superior Court to require the agency with custody to report on the appropriateness of termination of the parent-child relationship at the 18 months review hearing and annually thereafter. Motions for termination can be filed either by the District Government or by the child's attorney. To the Committee's knowledge the Corporation Counsel has filed no such motions, and until recently there was a backlog of cases that had been identified by the Department of Human Services as appropriate for termination petitions. A special recruitment of volunteer attorneys by the Superior Court Volunteer Attorneys Office met this need temporarily.

Considering the review requirements and the fact that 85% of the children in foster care, or approximately 1,832 children, have been in care for longer than 2 years, the cases in which there has been a motion filed to terminate the parent-child relationships are only a small percentage of those for which this action may be necessary.

The IJA/ABA Standards relating to abuse and neglect require that the court order termination when a child, who was under the age of 3 at placement, has been in placement for 6 months and cannot be returned home. For a child over 3 years at the time of placement the court must order termination after

1 year if the child cannot returned home.²⁷ Exceptions are allowed in specific circumstances.

Recommendation: The Court Study Committee recommends that the Corporation Counsel, attorneys for the children, and Superior Court Family Division Judges who review neglect cases at the times specified in the D.C. Code, give serious consideration at such reviews to whether termination of the parent-child relationship is in the child's best interests. In order to meet the serious obligations implicit in this recommendation, several steps would be required. The Corporation Counsel would have to fill all its neglect attorney positions so it could consider and file motions for termination. The Committee's recommendations relating to the conduct and timing of reviews and to judicial training and orientation would also have to be implemented.

I. Review After Termination

D.C. Code § 16-2360 requires the Superior Court Family Division to hold review hearings every 6 months after the termination of the parent-child relationship until the child is placed for adoption. These Court hearings are not being scheduled even though some children are not placed within the 6 months.

Recommendation: The Court Study Committee recommends that the Clerk of the Superior Court Family Division review cases in which termination of the parent-child relationship has been ordered, and schedule review hearings in those cases where the child has not been placed for adoption within 6 months after the termination order. Notice of the hearings should be sent to all parties and to persons with whom the child has been living for at least six months, in accordance with D.C. Code § 16-2360.

²⁷ See IJA/ABA Standard 8.4 relating to abuse and neglect.

J. Counsel

Counsel in child neglect cases are appointed by the Superior Court. D.C. Code § 16-2304 requires that all parties in a neglect proceeding be represented by counsel. The law also provides that each child who is the subject of a neglect proceeding is to be represented by a guardian ad litem who is also an attorney. Counsel are generally appointed on the morning of the initial hearing. They have only a few minutes to do any interviewing or investigating of their cases. In those cases that have been active with the Department of Human Services Child Protective Services Division for a period of time prior to petitioning, counsel is appointed a few days prior to the initial hearing. The guardians ad litem for children are volunteers who represent children through the D.C. Superior Court Volunteer Attorneys Office. This office assigns the cases on each day's Court calendar to attorneys. Since the attorneys are volunteering their time and generally are on duty on a particular day of the week, it is not unusual for several different attorneys to represent one child at different points in the proceeding. At times the attorneys are not adequately familiar with, or prepared for, their cases.

The second resource for guardians ad litem for children are law students in clinical programs. However, only Georgetown University now has a program representing neglected children. Twelve to sixteen law students are active in the clinic for 9 months and pick up approximately 15 cases each.

The quality of representation provided children has been very uneven, and the representation fragmented. Children have been denied the continuous, aggressive advocacy envisioned by the D.C. Prevention of Child Abuse and Neglect Act. The Court Study Committee believes many of the problems cited above could be abated with improved advocacy. (The May, 1980 Report of the Committee on Civil Legal Services of the Judicial Conference of the District of Columbia also addressed this generic problem.)

The Superior Court Volunteer Attorneys Offices has recently received a federal grant which has permitted it to hire 2 additional attorneys. Two years ago the Superior Court began using appropriated budget funds to pay for one attorney/director and an administrative assistant in the Volunteer Attorneys Office. The Office now has funds to pay a de minimus amount (\$30/hearing) to its volunteers, and is requiring those volunteers to participate in several days of training. The Office is also assigning individual cases to individual attorney for all purposes.

The system for parental representation in child neglect cases is shameful and inexcusable. Counsel for parents are drafted on an involuntary basis from the pool of attorneys who pick up juvenile and PINS cases under the CJA program. Drafted attorneys are required to take uncompensated neglect cases as a precondition to receiving Criminal Justice Act fee generating juvenile delinquency appointments, which, in many

cases provide the attorneys livelihood. There are only one hundred such attorneys and some 600 child neglect cases are petitioned each year. A number of these cases have two parents involved each requiring separate counsel. As these cases stay in the system for years, many attorneys have very high neglect caseloads.²⁸ The result of this situation is that the quality of representation of parents is very low although the societal cost and the stakes for all concerned are higher than in many criminal cases for which paid counsel is available. Additionally, the Courtroom hearing calendars back up because of the conflicting schedules of the attorneys. One-third to one-half of the continuances in neglect cases are granted at the request of the defense attorney. The Court Study Committee finds no justification for continuing this system of inadequate representation.

Without aggressive advocates to monitor families' service requirements, children found to be neglected stay in care for longer periods of time at great cost to their social well-being and to the government.

Recommendation: The Court Study Committee recommends that the Superior Court immediately expand the pool of attorneys from which counsel are appointed to represent parents in neglect cases. The Committee endorses the thrust of the D.C. Judicial Conference Civil Legal Services Report in this regard. However, we urge expeditious attention to this civil legal service issue for the reason that

²⁸ There are an estimated 3,000 neglect cases presently in the D.C. Court System.

the District Government is directly and integrally involved in initiating the civil proceedings to remove the children from the parent(s).

(Additional recommendations regarding the counsel aspect of the child neglect area are set forth in a subsequent section of this juvenile and neglect report concerning defense counsel.)

K. Superior Court Social Services

The Prevention of Child Abuse and Neglect Act provides that if a case is petitioned as abuse, the Superior Court Social Services Division is responsible for a social investigation, to be commenced immediately, to determine what services are necessary to ameliorate conditions of abuse, and to prepare a plan of treatment. The Social Services Division is required also to arrange services for the families of petitioned children promptly.

In cases petitioned as neglect other than abuse or those petitioned as abuse that have been recently active with the Department of Human Services Child Protective Services Division, (CPSD), the responsibility for social investigation, planning and services to the family rests with the Department of Human Services CPSD.

Title 16, § 2319 of the D.C. Code requires that the results of the social investigation and the plan be made available to all parties at least 5 days prior to the date of trial. Reports prepared by the Department of Human Services are rarely available before the day of trial while Court

Social Service Division more routinely meets the code requirement. The actual time required to complete a social investigation is not known by the Committee but social plans are generally not available for 6-8 or more weeks after referral of the case to the social service agency. While there was no data available on the subject, it appears to the Court Study Committee that services to families cannot be provided expeditiously when the investigations and plans on which services are based are not completed prior to trial. One result appears to be delays in the resolution of cases that would otherwise be resolved by stipulation; the hindrance of adequate preparation by counsel who must rely on the report on its face if it is presented at the trial or disposition, and the prolonged disruption of families. (The Committee is aware that in a very limited number of cases the disposition is consciously delayed to permit the parents time to meet certain conditions which are part of a proposed stipulation.)

The IJA/ABA Standards relating to abuse and neglect require that there be an investigation in all cases where a petition is filed and that there should be a report of investigation with recommendations and supporting information including:

- a. a statement of the specific harm or harms
... intervention is designed to alleviate;
- b. a description of the specific programs
and/or placements, for both the parents and
the child, which will be needed in order to
prevent further harm to the child; why such

programs and/or placements are likely to be useful, the availability of any proposed services, and the agency's plans for ensuring that the services will be rendered;

c. a statement of the indications (e.g., specific changes in parental behavior) that will be used to determine that the family no longer needs supervision or that placement is no longer necessary;

d. an estimate of the time in which the goals of intervention should be achieved or in which it will be known they cannot be achieved.

e. in any case where removal from parental custody is recommended, the report should contain:

(1) a full description of the reasons why the child cannot be adequately protected in the home, including a description of any previous efforts to work with the parents with the child in the home, "in-home treatment program," e.g., homemakers, which have been considered and rejected, and the parent's attitude toward placement of the child;

(2) a statement of the likely harms the child will suffer as a result of removal (this section should include an exploration of the nature of the parent-child attachment and the anticipated effect of separation and loss to both the parent and the child);

(3) a description of the steps that will be taken to minimize harm to the child that may result if separation occurs.

f. If no removal from parental custody is recommended, the report should indicate what services or custodial arrangements, if any, have been offered to and/or accepted by the parents of the child.

These requirements are not unlike those of D.C. Code § 16-2319, but the standards allow only 6 days to complete the investigation and report.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division adopt a Rule specifying a time limit of 10 Court days after the initial hearing for completion of the social investigation and service plan in child neglect cases. The Court Rule should require, for cases in which shelter care has been ordered, that the report include information on the investigation of alternatives to placement such as return home with supportive services, relatives, etc. The Rule should require distribution of the report and plan at least 2 Court days before the status hearing to counsel for all parties. The Court should review the plans with care and assure that the reports and plans meet the requirements enumerated here and those in § 16-2319(c) regarding services, time estimates, criteria for future decisions, and specific information on placement decisions.

L. Judges

Judges rotate through the Superior Court Family Division. Judges hearing various aspects of child neglect cases receive essentially no training for these tasks, nor do they have available to them a reference manual or bench book, list of resources, or other materials that might assist them to make the important decisions relating to custody, treatment, and severance of parent-child ties. Although the 1977 Prevention of Child Abuse and Neglect Act (PCANA) made substantial changes in neglect practice, the Superior Court's Neglect Rules have not been amended since the legislation's passage

and are now substantially out of compliance with the operative statute.

It is also questionable whether all the judges hearing child neglect matters are familiar with, or have read, the 1977 PCANA legislation. Certainly judges are not uniformly conversant in its requirements, underlying principles, and potential effects. If the Superior Court is to exercise the role assigned to it in the statute, judges must be familiar with the law and enforce its provisions energetically.

Recommendation: The Court Study Committee recommends that all judges prior to commencing their assignment in the Superior Court Family Division be required to participate in a training program that would include an orientation to the Court's role and responsibilities in child neglect cases as enumerated in the Prevention of Child Abuse and Neglect Act of 1977. The training should continue on a regular basis during a judge's assignment to Family Division. The training should include at the least presentations on:

- a) the causes of child abuse and neglect;
- b) treatment methods and outcomes;
- c) resources and disposition alternative available in D.C.;
- d) the effects of placement and separation on children and the importance of maintaining parent-child ties; and
- e) the importance of permanence and information on adoption resources.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division develop and adopt a bench book that would provide check lists to judges in neglect cases, on applicable time limits for hearings and reports, contents of reports, findings required for shelter care and commitment, etc.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division revise all its Neglect Rules to comply with the provisions of the Prevention of Child Abuse and Neglect Act of 1977 and to assure full treatment of all aspects of the cases.

M. Data

Data collected and published by the Superior Court relevant to child neglect cases are quite sparse. As noted above the Court Study Committee was unable to obtain information on the outcomes of new referral hearings or the lapse times for child neglect cases. The Committee commends the Superior Court for its current efforts to upgrade and modernize its system for data collection and dissemination in the juvenile and neglect area. Having accurate data on case outcomes, lapse times and other factors is critical to good management. Since the children and families involved in neglect cases are also affected by other D.C. agencies (DHS, Police, Schools), the Committee would urge the Superior Court to coordinate its juvenile and neglect data system with these other agencies.

Recommendation: The Court Study Committee recommends that the Superior Court collect, analyze and publish statistics on child neglect cases including the types of cases, case dispositions, lapse times, recidivism and other information that could assist the Court in tracking cases and evaluating its performance.

SECTION III JUVENILE DELINQUENCY

A. The Petitioning/Diversion Decision

When the police apprehend a juvenile in the District of Columbia they make a preliminary decision of whether to formally charge him/her by referring a complaint via a FD379 form to the Corporation Counsel and to the Superior Court Social Services Division. No data are available on the numbers of juveniles whom the police divert from, or choose not to refer to, the D.C. Court system. While their decision process is beyond the scope of this Committee's inquiry, the fact that so many cases referred are for less-serious charges and that the no petition and dismissal rates are high suggest that a larger class of young persons might be diverted from the Superior Court by the Metropolitan Police Department than is presently the case.

Using 1979 data to illustrate, the cases police refer to the Superior Court break down as follows:

Acts against persons	29%
Acts against property	
Arson, Burglary I & attempt	2%
Acts against property Other	49%
Acts against Public Order	14%
PINS	2%
Interstate Compact	3%
	99% ²⁹

²⁹ Does not = 100 due to rounding off of figures from Superior Court Family Division Statistics, September, 1979, Table 3, Juvenile Branch. Number of new cases of Type of Charge and Sex of Arrestee -- numbers from year to date column.

When a case is referred to the Superior Court, the Social Services Division is required under the D.C. Code to "conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed" (D.C. Code 16-2305(a)). Superior Court Social Services has authority to divert juveniles at this point but the D.C. Code provides in this same section of the statute that the Corporation Counsel can review this decision at the request of "the person making the complaint in a delinquency case." In practice the Office of the Corporation Counsel considers all delinquency requests simultaneously with Court Social Services and independently decides whether to petition. If the Superior Court Social Services' recommendation is at variance with the Corporation Counsel's decision, there is usually discussion between the staffs for the two organizations.

The Burt Study showed a total juvenile case no-petition rate of 35%, the Whittier Study a 27% no-petition rate, and OCJPA a 21% rate.¹⁰ Whether youth who are not petitioned are referred to other programs varies from case to case but there is no uniform policy regarding such diversion.

The Burt Study found a higher percentage of cases in which the Corporation Counsel no papered (no-petitioned) and

¹⁰ The office of Criminal Justice Plans and Analysis study examined 960 cases referred in September and October, 1979.

Court Social Services recommended petitioning than vice versa.²¹ Thus giving more petitioning discretion authority for juvenile cases to the Superior Court Social Services Division would not in itself result in more diversion of cases. To increase diversion, specific guidelines for identifying divertable youth must be set forth in the D.C. Code for the respective diverting agencies - The Police, the Corporation Counsel, and the Social Service Division of the Superior Court.

A first step in identifying those juveniles who could be diverted is to examine the data on the youth whose cases are no-petitioned, dismissed, or are going through a significant portion of the court process but are not committed by the Court. The charges against many of these youth are dropped after several weeks or months in the Court process, and some of these same youth may be referred for services which could be offered at an earlier point. Consideration whether to divert should include seriousness of the charge, prior convictions, age, present court status, adequacy of evidence, alternative programs and assessment of rehabilitation needs.

²¹ Burt Study, Table 4, page 10.

Action of Corporation Counsel	Court Social Services Recommendation			Total
	Petition	No-Petition	Unknown	
Petition	130	2	3	135
No-Petition	39	25	1	65
Total	169	27	4	200

The current juvenile petitioning practice does not seem to be based on any objective procedure or analysis. Considering the juvenile petitioning process used in the District of Columbia by seriousness of the offense, the data show that only 10% of the petitions filed were for violent crimes (Part I Felonies), 66% were for property crimes (Part I Felonies) and 24% were for other crimes (Part II - Non-Felonies).¹² Moreover, the Burt Study revealed no significant difference between the petitioning rate for violent crimes and for property crimes. Seventy-four percent of violent crimes are petitioned as compared to 80% of Part I property crimes. Forty-seven percent of Part II crimes are also petitioned.

The Court Study Committee believes there would be considerable merit to conducting an evaluative study using criteria such as those set forth above to determine whether earlier diversion would be effective for those juvenile cases that are not likely to be processed through the Court to formal disposition.

The criteria for petitioning a juvenile delinquency case presently applied by the Superior Court Social Services Division are contained in Superior Court Juvenile Rule 103, "Criteria for Intake," as follows:

(a) DELINQUENCY CASES. In determining whether the best interest of the child or the public require that a petition be filed, the intake unit shall consider the following factors:

¹² Ibid., p. 11.

(1) THE SERIOUSNESS OF THE ALLEGED ACT(S). With regard to the seriousness of the alleged act(s), the intake unit may proceed with discretion, except that the filing of a petition shall be recommended in all cases where the complaint alleges that the child committed one or more of the following offenses: homicide, forcible rape, robbery while armed, attempt to commit any such offense, assault with intent to commit any such offense, and burglary in the first degree.

(2) THE CHILD'S RECORD OF PRIOR POLICE AND COURT CONTACTS. With regard to the child's record of prior police and court contacts, the intake unit may proceed with discretion, giving due weight to the number and nature of such prior contacts, except that no act found not committed at a fact finding hearing shall be considered, and the filing of a petition shall be recommended in all cases (A) where the child is on probation and the complaint alleges an offense which would be a felony if committed by an adult, or (B) where the child is sixteen or more years of age and is already under commitment to an agency or institution as a delinquent child.

(3) WHETHER THE ALLEGED DELINQUENT ACT WAS COMMITTED UNDER MITIGATING CIRCUMSTANCES OR OTHER CONDITIONS RENDERING JUDICIAL ACTION INAPPROPRIATE. With regard to mitigating circumstances or conditions rendering judicial action inappropriate, the intake unit may proceed with discretion, taking into account the child's age and other circumstances surrounding the offense, and giving particular weight to the existence and availability of non-judicial community services which might serve the child's needs without the filing of a petition.

(4) WHETHER A PETITION HAS BEEN OR WILL BE FILED AGAINST AN ALLEGED CO-RESPONDENT FOR SUBSTANTIALLY SIMILAR ACTS. With regard to the pendency of other petitions filed against co-respondents, the intake unit shall, whenever possible, assign the same officer for all the alleged co-respondents in a given case, and shall attempt to give fair and equal treatment to all persons involved in a given offense.

(b) NEED FOR SUPERVISION CASES. In determining whether the best interest of the child or the public require that a petition be filed, the intake unit shall consider the following factors:

(1) In habitual truancy cases, the mental and physical condition of the child, the number of alleged absences from school, the circumstances surrounding such absences, the efforts of the school or other community resources to remedy the situation, and whether or not judicial action appears appropriate and reasonably likely to remedy the situation.

(2) In cases of offenses committable only by children, the nature and seriousness of the alleged offense, the circumstances surrounding the offense, and whether or not judicial action appears appropriate and reasonably likely to help.

(3) In cases of habitual disobedience and ungovernability, the specific acts of disobedience charged, the circumstances surrounding such acts, the reasonableness of the parental commands allegedly violated, the reasonableness of the child's actions in the light of prevailing community standards, whether or not there are non-judicial community services which might better serve the child's or the family's needs without the filing of a petition, and whether or not judicial action appears appropriate and reasonably likely to help.

The petitioning criteria above taken from existing Superior Court Rules in some respects compare very closely to those proposed by in the IJA/ABA Standards; however there is some difference in emphasis and inclusiveness.³³ The D.C. criteria require recommendation of a petition in defined serious cases but lack a corresponding emphasis on non-petitioning in less serious cases. Also, the definitions of serious cases the

³³ See the IJA/ABA Standard 2.8 relating to the Juvenile Probation Function.

Committee believes are too broad. Given the limited prosecutorial, probation and judicial staff, and the limited resources for commitment, no-petitioning a large percentage of cases with some sort of diversion program appears advised.

Juvenile delinquency cases may be petitioned primarily because the youth needs counseling, family intervention, or school assistance which presumably could be met during a pretrial period. However, this rationale for involvement in the juvenile justice system is questionable in the view of the Court Study Committee. A pre-petitioning diversion program to meet the juvenile's needs without further court action is needed. Where appropriate diversion should include restitution by the youth. Cases that now end in consent decrees are one group that would benefit from such diversion. (See recommendations in Rehabilitation Section.)

Recommendation: The Court Study Committee recommends that the Superior Court Social Services Division, Corporation Counsel Juvenile Section and the Metropolitan Police Department examine cases that fall out of the juvenile justice system through no-petition, dismissal or other method short of commitment, and identify a category of cases that police can divert prior to referral to the Superior Court, and a category of cases that can be diverted by Court Social Services. Superior Court Juvenile Rule 103 should be amended to reflect these categories.

Recommendation: The Court Study Committee recommends that the Superior Court seek to expand diversionary programs and keep extensive statistics on which the effectiveness of the various programs can be measured and compared to more traditional processes and programs.

B. Pretrial Supervision

INTRODUCTION

Detention of juveniles alleged to have committed delinquent acts or status offenses is a subject of universal concern. The substantial reliance upon secure detention for juveniles, the frequently substandard conditions of the facilities in which the juveniles are held, the forced idleness of the youth, and the general effects of detention on the juveniles have been well documented.¹⁴ In the District of Columbia these subjects have been raised in studies, articles and litigation.¹⁵ That the District of Columbia has the nation's highest rate of custodial placement of juveniles has recently been documented by the National Center of Juvenile Justice.¹⁶

The Court Study Committee found the IJA/ABA Juvenile Justice Standards On Interim Status particularly useful in examining the pretrial performance of the D.C. Superior

¹⁴ See for example Hearings before Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate 91st Congress and 93rd Congress. Also, Wald, Patricia, "Pretrial Detention for Juveniles" in Pursuing Justice for the Child, p. 119, Rosenheim, ed. 1976.

¹⁵ See the D.C. Crime Commission Report 1967, and In re Savoy.

¹⁶ The District of Columbia's rate of juvenile custody is nearly twice rate of the second highest state, and is 2400% of the lowest state's rate of juvenile custody. The rate is based on the number of alleged and adjudicated youth in public custody on Dec. 31, 1977 per 1000 youth aged 10-17 residing in the District in March 1977. (U.S. Department of Justice, Children in Custody: Advance Report, 1977.)

Court Family Division under the 1970 D.C. Court Reform Act.

The reader is referred to Appendix A for these standards.²⁷

The IJA/ABA Juvenile Justice Interim Status Standards are predicated on the conclusion set forth in the general introduction to the Interim Status of Juveniles Standards volume, namely that:

The detention of juveniles prior to adjudication or disposition of their cases represents one of the most serious problems in the administration of juvenile justice. The problem is characterized by the very large number of juveniles incarcerated during this stage annually, the harsh conditions under which they are held, the high costs of such detention, and the harmful after-effects detention produces. These difficulties are caused or compounded by profound defects in the system of juvenile justice itself: in the inadequacy of the information and the decision-making process that leads to detention; in the delays between arrest and ultimate disposition; and in the lack of visibility and accountability that pervades the process (footnotes excluded).

An examination of the District's pretrial supervision standards, practices, and the lapse times which determine the pretrial period leads the Court Study Committee to conclude that the District of Columbia is characterized by problems not unlike those noted by the IJA/ABA Report. The District of Columbia standards and criteria for detention are very broadly written and permit extensive latitude to police, court social

²⁷ The National Advisory Commission Standards for the Administration of Juvenile Justice of the U.S. Department of Justice also proposed standards in this area which are comparable in most major aspects to the IJA/ABA standards.

service staff and judges in the detention decision.³⁸ The Committee's review of pretrial data for the past fifteen years shows that the practice of those exercising this discretion in the District of Columbia is toward extensive reliance upon the detention of juveniles in the pretrial period. The time lapses in the system between court processes beyond the initial hearings are unregulated and frequently quite lengthy, thereby aggravating the detention problem.

According to D.C. Superior Court Family Division Reports in 1979, 50.25 percent (a monthly variation of from 46% to 59%) of the juveniles charged with criminal or status offenses and referred to the Juvenile Branch, Family Division of the D.C. Superior Court were in detention at the time of the first Court hearing.³⁹ The rate of juvenile detention reflected

³⁸ The term detention is used repeatedly in this section of the Juvenile Report of the Court Study Committee. The Committee has used the definition for detention provided in the IJA/ABA Standards Project: the placement of an accused juvenile during an interim period in a secure or non-secure facility. The term includes home detention as that concept has been defined and employed by the D.C. Superior Court, whereby the juvenile remains in his/her home with multiple daily contacts with a counselor. It should be noted, with regard to home detention that at the time the Committee was collecting pertinent data, many children ordered by the Court to be placed in home detention in fact were placed in an institutional custody status at the Department of Human Services Childrens Center facilities. Although no data are available, the Committee understands that some Family Division Judges permit some youth to remain in their own homes pending space availability in the Home Detention program.

³⁹ As discussed below if, as the Court Statistical Report language indicates, the Superior Court statistics were collected

(footnote cont'd)

in all of the sources examined by the Committee was quite high. By comparison, for example, the National Council on Crime and Delinquency recommends a detention rate of approximately 10% of charged juveniles.

Moreover, comparison of detention rates for juveniles pretrial with commitment rates after Court conviction in the District of Columbia shows a significantly higher detention rate pretrial.⁴⁰ The Burt Study shows that for all juveniles coming into Court in 1977 5.5% are ultimately committed, while analysis of data from the Court Statistical Reports for 1979 shows an 8.6% commitment rate.⁴¹ This means 5.5 to 11 times

(footnote cont'd)

after Court Social Service intake screening at the Receiving Home or at the Court, the total percent of youth held at some point before the initial court hearing is actually higher by 10 percent or more. See Court Statistical Reports, October 1978-September 1979, Table I Juvenile Branch: Tabulation of Detention or Release Status of Children Pending Initial Hearing Referred During Month.

⁴⁰ The IJA/ABA introduction to the Interim Status Volume states: "In contrast to the pretrial stage, much greater care and sensitivity is usually devoted to the post adjudicative disposition, its facilities and its alternatives to incarceration. The result, paradoxically, is considerably less 'detention' under better conditions once the juvenile justice system ceased to presume that the juvenile is innocent." (Single quotes added.)

⁴¹ Court Statistical Reports, Family Division, September 1979, Table 12. Juvenile Branch: Total Cases Disposed of During Current Month by Type and Percentage January-September 1979 (Year to date 3906 cases, 337 committed).

more juveniles in the District of Columbia are detained before trial than are committed after conviction.⁴²

There appear to be a number of reasons for the detention versus commitment discrepancy. First, Police, Superior Court Social Services, and Judges use detention as a deterrent -- i.e., they are giving the youth a taste of punishment. Deterrence is clearly an impermissible reason for pretrial detention in our judicial system. A number of judges and Court Social Services staff told the Committee that the supposed deterrent effect of detention is a factor in the Court's decision at the initial Court hearing. Second, many cases in which youth are detained are ultimately dropped because witnesses do not appear in court or the evidence is insufficient.⁴³ Third, and for the purposes of the Court Study Committee of most significance, the detention criteria in the District are very broad and set few limits on detention discretion.

1. The IJA/ABA Standards and the D.C. Guidelines

The standards proposed by the IJA/ABA are much narrower and more concrete than the relevant sections of the

⁴² A Stipulation of Evidence filed in the In Re Savoy case on March 10, 1976, states that only 26% of the youth initially detained in 1975 were ultimately committed. Thus the disparity has existed for several years but appears to have grown in the past four years.

⁴³ Family Division data developed by the Whittier Study, showed that over half the dismissed juvenile detention cases fall here.

D.C. Code and the pertinent Superior Court Rules. The standards present a clear policy favoring unconditional release and define both permissible and prohibited uses for detention and control. The standards provide that the least intrusive alternative should be chosen and require judicial review of detention cases on a regular basis. A comparison of these standards with those of the District, as embodied in D.C. Code § 16-2310, and Superior Court Juvenile Rule 106, reveals these major differences.**

- o District of Columbia law permits detention of a juvenile to protect the person or property of others or of the child; the IJA/ABA Standards do not include protection of property and permit detention or control only to reduce the likelihood of serious or imminent bodily harm.**
- o The IJA/ABA Standards list prohibited purposes of detention or control; no such prohibition is expressed in D.C. law or rule and, in fact, detention is used for the purposes prohibited by the standards.**

** D.C. Superior Court Juvenile Rule 106 and D.C. Code § 16-2310 are reprinted as Appendix B, of this Report. A later section of this pretrial supervision analysis will detail statistics on practices in the District of Columbia.

** See Interim Status Standard 3.2, Permissible Control or Detention. IJA/ABA Juvenile Justice Standards Project. Underlining added for emphasis throughout discussion of standards.

** IJA/ABA Juvenile Justice Interim Status Standard 3.3, prohibiting control or detention.

- o The D.C. Code and Court Rules provide one set of guides to Police, Court Social Services intake staff and Judges.⁴⁷ The IJA/ABA Standards provide different rules for the detention/release decision of the police, intake officials and judges which reflect the difference in roles, extent of control and review by others, and the time, information and resources available to each.⁴⁸
- o The presentation and nature of the factors in the D.C. Rule, e.g., "emotional character and mental condition of the child", "nature and circumstances of the pending charge", "length of child's residence and present community ties" are open-ended, subjective, and place no real limits on the discretion to detain juveniles. In comparison, the IJA/ABA Standards criteria are concrete, measurable, reviewable, and provide real limits to the discretion to detain or control.
- o The decision to detain in D.C. may be reviewed upon written application of the juvenile, though the procedure is seldom used.⁴⁹ The IJA/ABA Standards require automatic reviews every seven days.⁵⁰

The Court Study Committee finds no consistent practice over time on the part of persons exercising detention/release discretion over juveniles referred to the Superior Court Family Division and little adherence to the existing

⁴⁷ Superior Court Juvenile Rule 106(c) puts special limits on Court intake staff but this limit is in conflict with the recommendations of the IJA/ABA standards.

⁴⁸ IJA/ABA Juvenile Justice Interim Status Standard 1.2.

⁴⁹ Juvenile Rule 107(c).

⁵⁰ IJA/ABA Juvenile Justice Interim Status Standard 7.9.

D.C. Code statutory authority favoring release of alleged delinquents during the pretrial period.

Recommendation: The Court Study Committee recommends that D.C. Code § 16-2310 be amended to state more explicitly a policy favoring release of alleged delinquents during the pretrial period. The Committee further recommends that, prior to the enactment of clarifying language in this area, the Juvenile Rules of the Superior Court be modified to articulate clearly this approach. (See Interim Status Standard 3.1, IJA/ABA.)

Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to prohibit the detention of juveniles prior to adjudication where such detention is solely for the purposes of:

- (a) punishing, treating, or rehabilitating the juvenile;
- (b) satisfying the demands of a victim, the police, or the community;
- (c) permitting convenient administrative access to the juvenile;
- (d) due to the lack of a more appropriate facility or custody status alternative (See Interim Status Standard 3.3., IJA/ABA.)
- (e) allowing parents to avoid their legal responsibilities.

The Court Study Committee believes that the recommendation is of sufficient importance to be stated in the D.C. Code. At the same time the Committee concludes that the existing statutory authority of the D.C. Courts in the rulemaking area is broad enough to permit this change in the interim by Court Rule. The Committee also notes that when parents refuse to allow a child to come home shelter care facilities or foster home placement can be used, and/or a neglect petition filed.

Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to prohibit the detention of juveniles post adjudication and prior to Court disposition where such detention is solely for the purposes of:

- (a) punishing, treating or rehabilitating the juvenile;
- (b) satisfying the demands of a victim, the police, or the community;
- (c) permitting convenient administrative access to the juvenile;
- (d) due to lack of a more appropriate facility or custody status alternative. (See Interim Status Standard 3.3, IJA/ABA.)
- (e) allowing parents to avoid their legal responsibilities.

The Court Study Committee believes that the recommendation is of sufficient importance to be stated in the D.C. Code. At the same time the Committee finds that the existing statutory authority of the D.C. Courts in the rulemaking area is broad enough to permit this change in the interim by Court Rule.

Recommendation: The Court Study Committee recommends that Section 16-2310 of the D.C. Code be amended to permit detention of alleged delinquents only for the purposes of:

- (a) insuring appearance at Court hearings;
- (b) reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim status period; or
- (c) protecting the accused juvenile from imminent bodily harm, upon his or her request, and only at a facility to which he or she agrees.
- (d) reducing the likelihood the juvenile may commit additional felonies.
(See Interim Status Standard 3.2 IJA/ABA.)

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide clearly that when the freedom of movement of an alleged delinquent is to be restricted in any way in the pretrial and predisposition period, a form of conditional supervised release shall be favored over custodial placement. The Court has to balance as precisely as possible the need to control the juvenile during the pretrial period with the juvenile's right of maximum liberty and freedom of movement. (See Interim Status Standard 3.4, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the Council of the District of Columbia define by statute the separate interim period authority and responsibilities of the Police, the Superior Court Social Service Intake personnel and the Judges. Such statutory guidance should reflect the differences in the respective roles of the various decision-makers; the extent to which the discretion exercised by each is subject to control and subsequent review by others; and the time, information, and resources available to each at the time of decision. (See Interim Status standard 1.2, IJA/ABA, and subsequent recommendations in this section.)

2. The Detention Decision

In the District of Columbia, the decision of whether to detain or release is made at several points by different agencies.

a. Police

The first determination of whether to release the youth is made by the police who arrest the juvenile. While the police process is generally outside the scope of this Committee's purview, the D.C. Code provides that the statutory criteria and the implementing rules of the Superior Court must be applied by "all persons responsible for determining whether detention or shelter care is warranted prior to fact finding

hearing", D.C. Code §16-2310(c). Moreover, this determination is a critical factor in subsequent stages of the Court process, and beyond, as statistics examined by the Committee reveal that a child initially detained is more likely to be committed than one who is released.

The exact number or percentage of juveniles held each year by the Police in the District of Columbia could not be ascertained by the Committee. A variety of sources do provide figures on detention at later points in the juvenile justice system. As noted above, statistics of the Superior Court Family Division, show that 50.25% of the juveniles arrested in 1979 were in detention at the point of the first court hearing. Data for the first nine months of 1980 show that the Superior Court Social Service Division Intake staff release approximately 21 percent of the youth initially held by the Police. Thus the actual police detention rate is possibly as high as 70% of referred juveniles. While the Court Study Committee did not specifically examine police detention policies, it has been informed that police policy permits detention of juveniles charged with misdemeanor crimes and allows releasing the youth only to his/her parents.

The IJA/ABA Standards require police to release youth charged with misdemeanors and permit them to release others, providing concrete guidance for the exercise of this discretion.⁵¹ The District of Columbia has no similar provisions.

⁵¹ IJA/ABA Juvenile Justice Interim Status Standard 5.6.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require the release on a summons or citation of any juvenile arrested for a status offense or misdemeanor unless the juvenile requests protective custody, is in need of emergency medical assistance, or is known to be in fugitive status. In such misdemeanor and status offense cases, the D.C. Code should provide that the Police are permitted to release a youth on personal recognizance, to a relative, or to other responsible persons and organizations, public or private. It is the position of the Committee that the fact that a parent cannot be located does not relate to the permissible reasons for detaining a juvenile on a minor criminal charge. Existing provisions of the D.C. Code, § 16-2309, give the Police ample authority to handle properly juveniles suspected of being neglected. While failure to locate a parent, given the particular circumstances of the case, such as the age of the child and the time of day, may be factors indicating child neglect, these factors should not be part of detention criteria. (See the status offender and neglect discussion appearing elsewhere in this Report. Also see Interim Status Standard 5.6, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to permit the Police to hold in custody juveniles arrested:

- (a) on charges of first or second degree murder, or forcible rape; or
- (b) for other serious offenses when:
 - (1) the juvenile is charged with a felony crime of violence and he/she is under Court supervision for a delinquent act; or
 - (2) the juvenile is charged with a felony and is on release status on another felony charge;
 - (3) the juvenile is in fugitive status; or
 - (4) the juvenile has a record of willful failure to appear in Court within the past two years. (See Interim Status Standard 5.6, IJA/ABA.)

b. Superior Court Social Services

Youth detained by the police are delivered to the Superior Court (between 6 a.m. and 3 p.m. weekdays, 6 a.m. and 11 a.m. Saturdays) or to the DHS Receiving Home (all other times). At this point staff of the Social Services Division of the Superior Court (probation officers at Court, paraprofessionals at the Receiving Home) review the police decision to hold the juvenile prior to the detention hearing. Superior Court Social Services intake staff are permitted to release youth to parents or to hold them for judicial determination. They may not place youth in a shelter house, or in home detention, or release a child on personal recognizance. A report on detention levels in 1975 states that approximately 10% were released at the Receiving Home by probation intake.⁵² More recent data for the first nine months of 1980 show the release figure at probation intake increased to 21 percent.

As previously noted Superior Court, Family Division, statistics show that 50.25% of the juveniles referred to Court in FY 79 were held by Court Social Services Intake for a detention hearing.⁵³ These juveniles await the detention

⁵² Dr. Marty Beyer, unpublished study of District of Columbia Juvenile Detention, July-September, 1975. January 1976.

⁵³ The fluctuation of 46-59% represents monthly differences. The Court statistical report divides cases referred into 2 categories -- detained, and released by Receiving Home. It appears to us that the latter category includes youths released

(footnote cont'd)

hearing in a lock-up status at the Courthouse or at the Receiving Home.

Comparison of D.C. practice with the thrust of the IJA/ABA standards reveals a number of major differences.

- o The IJA/ABA Standards require the intake official in cases where release is not required to consider diversion programs, forms of control short of detention, and non-secure detention.¹⁴ D.C. Court Rules do not permit Court Social Service intake personnel to consider non-secure detention alternatives.
- o The IJA/ABA Standards provide guides for the use of diversion, release programs, secure versus non-secure detention, and

(footnote cont'd)

by police and by Court Social Services staff at Court and the Receiving Home, (Superior Court, Family Division, Monthly Statistical Reports, 1979). The Whittier Study sampled 100 petitioned juvenile cases closed between May and October 1979. Forty-eight percent of these petitioned cases were detention cases, which would imply a lower overall detention rate than the Court's and the Burt Study statistics. Whether this 48% figure refers to status before or after Court Social Services action is not clear, however.

¹⁴ IJA/ABA Interim Status Standards 6.6C.

protective detention.⁵⁵ Except for the Superior Court's In Re Savory Rulings, the provisions of which are frequently disregarded, such prescriptive guides are nonexistent in the District of Columbia.

- o The IJA/ABA Standards for intake personnel require release unless the juvenile is:
 - (1) a fugitive from another jurisdiction; or
 - (2) charged with a crime of violence (felony type) which would, if proven, likely result in commitment to a secure facility, and:
 - (a) the charge is 1st or 2nd degree murder, or
 - (b) the juvenile is in an interim status under the jurisdiction of the Court in a criminal case, or
 - (c) the juvenile is an escapee, or
 - (d) the juvenile has a recent record of willful failure to appear.⁵⁶

The Standards also provide that "no category of alleged conduct or background in and of itself should justify a failure to exercise discretion to release."⁵⁷

⁵⁵ IJA/ABA Interim Status Standards 6.6C, and 6.7.

⁵⁶ IJA/ABA Juvenile Justice Interim Status Standard 6.6A.

⁵⁷ Ibid. 6.6B.

D.C. Superior Court Juvenile Rule 106 provides lists of factors to be considered which give near total latitude to detain and requires detention if certain charges are alleged.**

Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to permit Superior Court Social Services intake staff to release youth or place them in a shelter care facility before the initial court appearance on conditions appropriate to the various factors set forth as recommendations below.

Recommendation: The Court Study Committee recommends that the Superior Court adopt specific Juvenile Rules setting out guidelines prescribing appropriate levels of detention for those alleged delinquents who may be detained pretrial. (See Interim Status Standard 6.6, IJA/ABA.)

Recommendation: The Court Study Committee recommends that specific guidelines be established by statute and by Court rule which would require the release of alleged delinquents in the pretrial period unless:

(1) the juvenile is charged with a felony crime of violence, and which, if proven, would be likely to result in commitment to a secure institution, and;

(a) the charge is first or second degree murder, or forcible rape; or

(b) the juvenile is, as a result of a delinquency finding, either committed or on probation; or

(c) the juvenile is an escapee from a facility to which the Court committed him or her for a delinquent act; or

** Superior Court Juvenile Rule 106, subsection (6).

(d) the juvenile has a record within the past two years of willful failure to appear before the Court; or

(2) the juvenile is a fugitive from another jurisdiction.

(3) the juvenile is charged with a felony and is currently awaiting trial for a felony charge. (See Interim Status Standard 6.6, IJA/ABA.)

When a case comes within these specific instances detention is discretionary, not obligatory.

c. New Referrals Court Detention Hearing

Detained youth whose cases are petitioned are brought before a judge in the Family Division New Referrals Court.⁸⁹ The Court Social Services intake staff and Corporation Counsel present recommendations on release versus detention; defense counsel, respondent, and his/her family may present arguments; and the judge decides whether to detain or release and may decide the place or level of detention and any condition of release. (As of the time of this study, the Superior Court does not tabulate any statistics on the outcome of these hearings.)

The Burt Study, based on 200 randomly selected cases referred to the Superior Court Juvenile Branch in 1977, revealed that 47% of all cases and 68% of the petitioned cases

⁸⁹ The Whittier Study and the Burt Study show a 27% and 32.5% no-petition rate, respectively. However, no figures were available on the percentage of detained youth whose cases were no-petitioned at this point.

were detained before the trial or fact finding hearing by judicial order.⁶⁰ An unpublished study by the office of Criminal Justice Plans and Analysis, the D.C. LEAA State Planning Agency, of 960 juvenile cases referred to Superior Court Family Division in September and October 1979, reported Court orders for secure detention in 25% of the petitioned cases.⁶¹

Persons interviewed by the Court Study Committee stated that most judges follow the recommendations with regard to detention of the Court Social Services Division Intake staff. The attitude of the judge is also a factor. Some judges release most youth while other judges detain nearly all. This phenomenon is reflected in the occasionally wide fluctuation of monthly juvenile detention rates.⁶² The Committee was informed by judges and attorneys that the practice of many

⁶⁰ These were cases in which a detention order was on file and include cases ordering home detention or shelter care. The study included home detention and shelter care orders because the practice of the Superior Court Family Division was for these youth to be held in secure detention while awaiting vacancies in home detention or shelter care, and there was no way to determine in how many cases this occurred. (See also footnote no. 38).

⁶¹ This study excluded non-secure detention orders, orders left open regarding secure/non-secure detention, and cases where secure custody was used even though non-secure custody was ordered (due to lack of space in non-secure programs) which the OCJPA report notes occurs in a significant number of cases.

⁶² This fluctuation is also reflected in the studies cited in this Report. Thus the OCJPA Study and the Burt Study both examined D.C. juvenile detention practices, but because they

(footnote cont'd)

judges and the Department of Human Services is to place a child, for whom the detention level deemed appropriate is unavailable, in a more secure or more physically restrictive detention facility. No regular review of these "interim" detention cases or indeed of any detention cases is made by the Court.⁶² It is also pertinent to note that no rule or procedure exists permitting the temporary release of a detained youth for any purpose such as special diagnostic services, treatment planning, or assisting defense preparation.

The IJA/ABA Standards recommend guidelines for judges, and require judges to review the actions of intake personnel, measuring their compliance with the prescribed guidelines. The Standards also require written reasons supporting detention orders, (Standard 7.7). The Standards also require judicial visits to detention facilities, (Standard 7.8), prohibit use of more secure facilities when the appropriate level of custody is unavailable, (Standard 3.6), allow

(footnote cont'd)

studied cases referred to the Superior Court in different months when different judges were making the detention/release decision the detention rates reported were not similar.

Also contributing to the variance is the definition of detention. The Burt Study included secure and non-secure detention (i.e., the Receiving Home, Oak Hill, Cedar Knoll, shelter houses and home detention). What the Court statistics include is probably only secure detention, as that is all that is available to police and Court Social Services prior to the detention hearing.

⁶² See Discussion on Detention alternatives which follows several pages later in the text.

temporary release for certain purposes, (Standard 7.7A), and require regular reviews by the judge of detention, (Standard 7.8).

The IJA/ABA Standards governing detention criteria to be applied by judges are similar to those for social service or probation intake staff. The Standards would require judges sitting in the juvenile court to visit each secure facility every sixty days; and weekly reports on detention are to be made by the custodial agency to judges and the public. The District of Columbia has no similar guidelines or requirements.

Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule requiring that each detention order for alleged delinquents be accompanied by a specific written or recorded oral statement as to the findings of fact and reasons why no measure short of detention will meet the permissible purposes of detention as set forth in an earlier recommendation. It is the Committee's contention that the mere checking of boxes on a preprinted order is not sufficiently specific to comply with the spirit of this recommendation. (See Interim Status Standards 7.7A, IJA/ABA.)

Recommendation: The Court Study Committee recommends that transcripts of probable cause hearings be available to counsel upon request within 48 hours.

Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule specifying that a judicial order of detention shall be construed as authorizing non-secure detention except where such order contains express direction to the contrary supported by reasons. (See Interim Status Standards 7.7, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require each Superior Court Family

Division. New Referral Judge to visit each facility used for judicially ordered secure detention within the first two weeks of his or her assignment. The D.C. Code should further provide that facilities not visited by judicial officers, according to the schedule set forth in the Code as amended shall not be utilized for the secure detention of juveniles. (See Interim Status Standards 7.8, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require that each residential facility utilized for the detention or shelter care of alleged delinquents, PINS, or neglected or abused children shall be visited by a Family Division Judge at least once every three months. The Code should also provide that residential facilities not visited according to the schedule set forth in the Code shall not be utilized for the detention of juveniles. (See Interim Status Standard 7.8, IJA/ABA.) The Committee recommends that the D.C. Code be further amended to require that the Chief Judge of the Superior Court be responsible for monitoring this activity, either directly or through such delegations as he/she may determine. (Foster family homes should be specifically excluded from the definition of a residential facility.)

Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to prohibit the practice of placing alleged delinquents in levels of custody more restrictive than necessary simply because less restrictive facilities or supervision programs are unavailable. The Committee observes that the present practice is that when a Judge determines that a child should be placed in a home detention program or shelter house and a slot is not currently available, frequently the child is placed in a more confined status. The IJA/ABA Standards state that this practice is not acceptable, and the Committee concurs with the IJA/ABA Interim Status Standards in this area. (See Interim Status Standard 3.6, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the Superior Court adopt a Juvenile Rule authorizing the temporary, non-overnight, release of detained juveniles in appropriate custody for the purposes of:

- (a) preparing their cases; or
- (b) being evaluated for placement, program admission or other purposes.

(See Interim Status Standards 7.7A, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the D.C. Code § 16-2310 be amended to require that a detention review hearing be held no later than 14 calendar days after a secure custody detention order is issued, and at the time a fact finding hearing is continued for a juvenile held in secure detention. (See Interim Status Standard 7.8, IJA/ABA.)

Recommendation: The Court Study Committee recommends that the Superior Court enter into an agreement with the Department of Human Services providing that when a Judge orders secure detention for an alleged delinquent, the Department of Human Services Screening Team is to review the case, explore less secure custody alternatives, and report back to the Court at the mandatory 14 calendar day detention review hearing proposed in the preceding Recommendation. (The Committee is informed of a recently adopted DHS Detention Plan which may impact on this matter.) Should it not be feasible to execute such an agreement, the Court should have the Social Services Division, or a third party contractor, perform this task.

d. Characteristics of the Juvenile Detention Population

The result of the District of Columbia's broad criteria and extensive detention practice is that many youth -- not simply the potentially dangerous youth, nor the youth likely to flee -- are detained. In fact, a surprising number

of first offenders and juveniles accused of minor offenses are detained. Superior Court statistics for January-September 1979 show 24% of the juveniles referred had other active cases, and 41% were not previously known to the Social Services Division. For the same period, the proportion of violent or dangerous crimes charged can be computed to be no more than 29% of the total.**

It is widely recognized that detention decisions should not be based on any single factor.** Several factors such as age, crime charged, circumstances surrounding the crime, and the likelihood of failure to appear must be considered together.** Unfortunately, few composite data are available on youth referred to the Superior Court. Available statistics reveal, however, that when even two of the above factors are considered together the number of children appropriate for detention in any category shrinks considerably.

** See Appendix C for compilation of the 29% figure.

** The IJA/ABA standards specifically state "No category of alleged conduct or background in and of itself should justify a failure to exercise discretion to release." (Standard 6.6B.)

** In a 1976 memo to Superior Court Judges, Chief Judge Greene defined dangerous juveniles as those: 1) who are charged with or found involved in a "violent offense" i.e. murder, manslaughter, forcible rape, armed robbery, assault with a dangerous weapon involving a gun or resulting in substantial injury, assault with intent to kill, rape or maim, or burglary in the first degree involving use of a weapon; 2) are 15 years old or older; and 3) have at any time in the past been found involved in any felony type offense.

The Burt Study reported that 9% of the petitioned cases involved charges for violent crimes (Part I Felonies) and 29% of the youth charged with violent crimes had previous convictions. Thus 2.9%, or 4 of 135, youth petitioned were charged with a violent crime and had any past conviction.⁶⁷ Similarly, Burt's figures show 25.2% or 34 of 135, of the petitioned youth were charged with Part I property crimes and had any prior conviction.⁶⁸ These data clearly suggest the inherent problems in using criteria for detention which consider too small a set of factors.

The Superior Court has data comparing the present charge and number of previous referrals (comparable to arrests, not convictions).⁶⁹ Utilizing the "dangerous charges" category from the table in Appendix C, 53.6% of the youth charged with a dangerous crime have a previous arrest record of any type and these youth constitute 15.7% of all referred youth.⁷⁰

3. Detention Alternatives

Former Chief Judge Harold H. Greene devoted considerable energy toward improving the pretrial supervision of juveniles. His active role in this area exemplified the

⁶⁷ Burt Study p. 12.

⁶⁸ Ibid.

⁶⁹ The lack of comparable data necessitates the Committee's rather confusing presentation of different categories.

⁷⁰ Table 7 Juvenile Branch: Child Rearrested by Type of Most Recent Charge (Sept. 1979) T = 669.

judiciary's concern and responsibility for the youth coming before the D.C. Superior Court. As a result of a series of judicial orders issued by Chief Judge Greene in the case of In Re Savoy, the District of Columbia operates a differential detention program that includes facilities for maximum, medium and minimum secure detention of juveniles; non-secure youth group detention homes (shelter houses) and a home detention program of supervision for youth in their own homes.⁷¹

All of these facilities are operated by the Department of Human Services (DHS) which is required by Court order to maintain at least 6 non-secure group homes for approximately 90 juveniles as well as 60 home detention slots.⁷² The Receiving Home can be used only as a temporary holding facility—i.e. 24-48 hours for youths arrested by the police pending a detention hearing, 24 hours for screening, overnight, before or 6 hours after a court appearance, and for 6 hour periods for visits or interviews.⁷³

The Savoy orders also require that after a detention order has been entered at the detention hearing, the choice of placement in maximum, medium, and minimum secure custody or shelter house is to be determined by a screening team of at

⁷¹ In Re Savoy. D.C. Superior Court, No. J-70-4808, October 10, 1970, January 12, 1973, February 27, 1974. Greene, C.J.

⁷² Ibid. In addition, a private agency under contract provides alternatives to detention for 60-100 youths per year in foster homes, group homes and nonresidential programs.

⁷³ Op. Cit. In Re, Savoy.

least 3 Department of Human Services employees who are to review a range of information on all youth held pretrial, interview the youth, "assess the level of risk with respect to illegal acts during the predispositional stage and the reliability of appearances for court hearings and assign the child to custody accordingly." Placement in the home detention program, however, requires a judicial order. The Savoy orders do not curtail a judge's discretion to order a particular level of detention for a given child but anticipates this authority will be exercised sparingly.

An Amendment to the Savoy Order in 1974 permitted the Department of Human Services to drop the number of youth group homes from 8 to 6 compensating for this decrease by expanding the home detention program from 30 to 60 youths. A year after the original Savoy Order, the Court noted, "According to DHR, only seven, or 3.5% of the 197 children who participated in this (the Home Detention) program during the past twelve months absconded during their participation, and only 5, or 2.4% were found to be involved in new law violations." The Court also noted,

If the experiment with this relatively safe group should continue to be successful, it might well point the way toward a progressively larger scale use of intensive supervision, for adults as well as for juveniles, as an alternative both to incarceration and to standard bail, probation, and parole. This kind of program uniquely avoids the debilitating and corrupting aspects of imprisonment, on the one hand, while reducing the relative

elements of risk to the community from routine release program on the other.⁷⁴

For that reason, assuming economic feasibility, a period of close and intensive supervision and guidance may well turn out to constitute a more effective mode of pretrial control and post-conviction rehabilitation for many types of individuals than either a term of imprisonment or the conventional methods of supervision involving less contact between supervising officer and defendant and therefore less opportunity both for preventing renewed criminal activity and for channelling law violators toward productive lives.⁷⁵

⁷⁴ A footnote in the Savoy Order reads:

It is too early to assess the long-range effects of the present limited experiment with intensive supervision and treatment. Careful monitoring of the ultimate progress of the home detention children -- and of any other groups to which the concept might eventually be extended -- would appear to be in order.

This was written in 1974 when the program had operated less than one year; however, the Court Study Committee is unaware that any attempt has been made to perform a long range assessment such as Chief Judge Greene anticipated would be done.

⁷⁵ A footnote in the Savoy Order reads:

According to District Government authorities, the average daily cost per child in the Receiving Home was \$17.60; the average daily cost per child under the home detention program is estimated about \$10. In any event, if home detention were adopted on a larger scale, costs might be held down without significant loss of effectiveness through the use for some purposes of paraprofessionals under the guidance of professional home detention counselors. (Opinion In Re Savoy, February 17, 1974.)

(Clearly costs have increased since 1974. However, the relative differences probably remain applicable.)

In a stipulation of evidence filed in the Savoy case in March, 1976, the average daily pretrial detention population was stated to exceed 300. The combined capacity of open custody detention programs (group homes and home detention) was 150. However, the actual average daily population of open custody was only 115 in FY 75, and 112-126 in FY 76, while DHS reported waiting lists for these programs in almost every week of those 2 years. The stipulation also reported significant understaffing of the secure facilities. These statistics paint a gloomy picture of detained juveniles waiting in understaffed secure facilities to get into underutilized open custody programs.

A comparison of the projected number and assignment of detained youth (based on a population of 200) as set forth in the Savoy Order of February 1973 as amended, with the Spring, 1980 actual detention data is instructive.

A Comparison of the Patterns of Juvenile Detention as set forth in the 1970 Savoy Order, as amended, with the Actual D.C. Juvenile Detention levels in Spring, 1980.

<u>Savoy Order</u>		<u>Spring 1980 Juvenile Detention Level</u>
Maximum Security	40 or 18%	111 ⁷⁶ or 36.5%
Medium Security ⁷⁷	50 or 22%	47 or 15.5%
Minimum Security ⁷⁷	40 or 18%	30 or 10%

⁷⁶ Includes 47 at Oak Hill, 25 at Receiving Home, and 39 at the Cedar Knoll maximum security cottage.

⁷⁷ Includes other cottages at the DHS facilities in Laurel, Maryland.

<u>Savoy Order</u>		<u>Spring 1980 Juvenile Detention Level</u>
8 youth group homes (non-secure)	65 or 29%	62 or 20%
Home Detention	30 or 13% 225 100%	55 or 18% 305 100%

The Court Study Committee is concerned that in a context where the number of juveniles referred to Court has been decreasing -- as is the case in the District of Columbia -- the number and percentage of youth held in detention of any sort is actually increasing. Currently twenty percent of the detainees are in shelter houses while the Order calls for 29 percent to be in this status. Home detention is being used more, but as the data indicates, fully twice as many juveniles are in maximum security custody in 1980 then the Order contemplates. The number of shelter houses has been maintained at six, but most have been reduced from a capacity of 12-15 to 8-10. The home detention program has consistently been overcrowded, and Judge Greene's suggestion that expansion of this program be explored has been ignored by the Department of Human Services and by the Superior Court until very recently.

According to the 1976 Beyer Report, the judges specified the level of, and even the place of, detention in 80% of the cases, and while no current statistics are available, probation officers note this is still a prevalent practice. Moreover, judges are ordering a significant number of juveniles to the Receiving Home despite Judge Greene's

finding and Court Order that the facility is not an appropriate facility within the meaning of the D.C. Code § 16-2313(b)(3), and is closed except for specified temporary holding.⁷⁸ In 1977-78 there were 25 youths being held on more than a temporary basis in the Receiving Home for periods averaging 56 days.⁷⁹ The Court Study Committee learned in the course of its' investigation that the screening team has been reduced to perfunctory clerical functions with judges again making specific placements that are more appropriately made by the mental health and social service professional staffs.

As this Report is being finalized the Superior Court and the Department of Human Services are initiating a program to expand the use of home detention in the pretrial period, and concomitantly to reduce the use of secure detention. Additionally the plan contemplates renewed activity by the DHS Screening Team. The thrust of the program appears to be along the lines the Court Study Committee favors in this report. Since the DHS plan is a very recent and the Committee has not been able to see the Plan or any operational data, the Committee is unable to assess the actual impact on the expanded home detention program. The Committee's recommendations to shorten the pretrial period and tighten detention criteria are consonant with DHS and Court objectives in this area.

⁷⁸ In Re Savoy.

⁷⁹ Burt Study, p. 19. (There is nothing to indicate that the situation in 1980 has changed substantially since the Burt Study data was collected on juveniles entering the system in 1977.)

Judges interviewed reported that the shelter houses and home detention programs are frequently not available and that waiting lists are common. When non-secure facilities or programs are full, the practice of many judges and of the screening team has been to place the juvenile in a higher level of detention. Thus, a juvenile whose background and offense characteristics may justify no higher level of detention than shelter care, and who could not ordinarily be detained in an institution, waits for weeks in secure detention before space becomes available in a shelter house. The 1976 Beyer Report noted gross irregularities in the waiting list process including failure to keep the lists current, dropping names from the list despite lack of Court action, and the existence of waiting lists for facilities with vacancies. Despite these problems and despite failures to carry out judicial orders, there is very little review of judicial orders after the initial detention hearing. The Superior Court has no mechanism for initiating such reviews, and few attorneys avail themselves of the opportunity to request Court review of the detention order.

The conditions and programs in the District of Columbia juvenile detention facilities have been found by various reports and in various lawsuits to be inadequate and substandard. The size of the facilities -- 20-40 juveniles in each of the Childrens' Center cottages and 80-130 juveniles in

the Receiving Home -- has been the subject of concern as well."⁸

Standards

The IJA/ABA Standards recommend that:

- o "A sufficiently wide range of non-secure detention and non-detention alternatives should be available to decision-makers so that the least restrictive interim status appropriate to an accused juvenile may be selected.
- o The range of facilities available should be reviewed by all concerned agencies annually to insure that juveniles are not being held in more restrictive facilities because less restrictive facilities are unavailable.
- o A policy should be adopted in each state favoring the abandonment or reduction in size of secure facilities as less restrictive alternatives become available."⁹

Recommendation: The Court Study Committee recommends that the Department of Human Services immediately expand the capacity of non-custodial pretrial supervision programs

⁸ See e.g. In Re Savory; Report of the Council of the District of Columbia Task Force on the Reorganization of DHR, January, 1978.

⁹ IJA/ABA Interim Status Standard 10.3.

for juveniles who do not meet the detention criteria recommended above but, who may require some supervision.

Recommendation: The Court Study Committee recommends that the Superior Court, Family Division Administrative Judge, The Director of the Superior Court Social Services Division, and the Social Services Commissioner of the Department of Human Services, met quarterly for at least the following purposes:

- (a) assessing adequacy of pretrial supervision programs;
- (b) assuring the development of sufficient alternatives to secure detention;
- (c) identifying steps to improve the quality of programming and supervision in existing facilities;
- (d) identifying strategies to improve Court/DHS communications concerning vacancies and waiting lists for various programs;
- (e) developing policies to regulate the facilities and programs used for pretrial supervision, using as guides the IJA/ABA Standards 10.5, 10.6, and 10.7 relating to size, education, and rights of juveniles in detention.
- (f) insuring that no juveniles are held in secure facilities because less secure facilities are not available. (See IJA/ABA Interim Status Standards, 6.6 and 10.8.)

The Clerk of the Family Division should be charged with the administrative responsibility of assisting the Administrative Judge in these efforts.

Recommendation: The Court Study Committee recommends that the Superior Court assess the adequacy of existing juvenile pretrial supervision programs and facilities used by the Family Division of the Superior Court. To facilitate this activity, the Court should receive monthly reports from the Department of Human Services and from the judges who visit the facilities and programs. The reports should include information on each

facility's size, characteristics of the detained population, staffing ratios, and major problems at each facility and program utilized for juveniles' pretrial supervision. (See IJA/ABA Interim Status Standard 3.6.)

Recommendation: The Court Study Committee recommends that the Family Division Administrative Judge require bi-weekly reports on the number, characteristics and other pertinent data on youth placed on waiting lists for pretrial programs.

Recommendation: The Court Study Committee recommends that the Superior Court regularly collect and aggregate data on the factors relevant to the detention, control, and release of juveniles referred to the Court. Analyses should be undertaken of the numbers, characteristics, and subsequent juvenile justice involvement, school, and employment information on juveniles referred to specific programs including secure detention, non-secure detention, and other release programs for the overall purposes of:

- (a) evaluating the relative appropriateness and risks of various controls;
- (b) permitting projection of program needs; and
- (c) evaluating adherence to established guides and rules, and determining the need for modifications thereto. (See IJA/ABA Interim Status Standard 7.9B.)

Recommendation: The Court Study Committee recommends that use of the existing Receiving Home for Children of the Department of Human Services as a secure detention facility should be permitted only after completion of the renovation of the facility to meet IJA/ABA architectural standards. Alternatively, the continued use of the Receiving Home should be very strictly limited as provided in the existing Superior Court Orders in the Savoy Case.

4. Time in Detention

a. Lapse Times

While the thrust of the following subsection is directed at the need to reduce further the length of time juveniles are in the D.C. Court system, the reader should keep in mind the opening section of this overall report which noted some of the important steps that have already been taken to facilitate the processing times of juvenile cases in the Superior Court when compared with the old Juvenile Court. The length of time each youth spends in detention or other pretrial status affects pretrial supervision needs. While the length of time a case takes to reach various procedural stages is also important in terms of the effectiveness of Court intervention, the impact of lapse times on detention is so critical that it is discussed separately here.

The Superior Court does not keep track of the time between the different steps in juvenile proceedings nor does it keep track of the actual whereabouts of each young person in its jurisdiction.¹² The Burt Study disclosed that the range of time youths were detained varied from less than one

¹² The new Superior Court, Family Division information system being planned by the JUSTIN project should collect information on time lapses as well as track individual youths. The Court Study Committee, like the Ellison Committee Report in 1970, urges the Superior Court leadership to make every effort to assure that juvenile time lapse data is routinely collected and reported in the JUSTIN information system to both Court officials and others outside the Court who have legitimate concerns in this area as well.

day to more than one year; the average time was 63 days."¹ The data further reveal that the major delays are between the initial or detention hearing and the fact finding hearing (average time 111 days, median time 61-90 days). The study also documented that the Court holds initial (or detention) hearings promptly (usually within 48 hours).

The more recent Whittier Study data show median lapse times between petitioning and dismissal in detention cases to be 71 days (90 days for release cases); between petitioning and trial in detention cases to be 48 days (86 days in release cases); between petitioning and plea in detention cases to be 58 days (55 days in release cases); and between petitioning and consent decree in detention cases to be 54 days (48 days in release cases).

Information on the reasons for delays is scarce. The Burt Study data, while based on a limited sample, shows that continuances are frequent -- over half the cases scheduled for trial are continued at least once, nearly a third are continued at least twice, and 10% are continued three or more times."² The average time to trial for juveniles coming through the Superior Court Family Division in 1977 was 146

¹ A Stipulation of Evidence filed in the Savoy case presents the average length of detention as 49 days in FY 75 and 65 days in the first half of FY 76.

² Only 25 of the 200 cases in the Burt sample went to trial, but 108 cases were scheduled for at least one trial date. The Whittier Study reported 52% of cases are continued at least once, for periods ranging from 2 weeks to two months.

days (range of 18-682 days). Reasons for not holding the trial on the first trial date set were frequently not stated in the record (22%) or were recorded as mutual request or consent (13%). Other reasons were that no judges were available, the government was not ready, the juvenile was not in court, and the defense attorney was not ready or ill. These reasons accounted for only 22% of the continuances. The reasons for the majority of continuances stated were: dismissed (or closed) (16%); waiver of trial and plea (19%); and consent decree (10%)."

The normal practice with respect to the Superior Court in granting continuances in juvenile cases is very lax and reflects a use of the trial date as a time for negotiation." Stated differently, currently negotiations concerning disposition do not begin until the date set for trial.

D.C. Code § 16-2312 requires a detention or shelter care hearing to "be commenced not later than the next day (excluding Sundays) after the child has been taken into custody." The Family Division may grant a continuance of up to 5 days of any part of the hearing except the determination of the need for detention or shelter care.

" The Whittier Study data on reasons for continuances was not broken down into comparable categories.

" Family Division Rule G, which sets out requirements for continuances and provides that those requested fewer than 2 days before trial will not be granted absent extraordinary circumstances, is largely disregarded.

The statutory requirement that the Superior Court hold the initial juvenile detention or shelter care hearing within 24 hours of the juvenile being taken into custody is identical to the IJA/ABA Standard (7.6A). The Burt Study and Whittier Study data show that the Court does an excellent job of meeting this requirement.

The District of Columbia does not have any law, rule, or guides, however, concerning the amount of time which may elapse between the stages of a juvenile case that occur after the initial court hearing.

Standards

The IJA/ABA Standards propose:

- o that fact finding hearings should be held within 15 days of arrest if the juvenile is in detention or within 30 days if he/she is released. Disposition hearings should be held within 15 days after conviction if the youth is detained, and within 30 days if not.⁸⁷ (The 1970 Ellison Committee Report on the Juvenile Court of the District of Columbia, recommended statutory limits of 45 days

⁸⁷ IJA/ABA Juvenile Justice Interim Status Standard 7.10. The National Advisory Committee to the Administration on Standards for the Administration of Juvenile Justice are identical to the IJA/ABA Standard 7.10.

from filing of complaint to disposition in juvenile detention cases and 90 days in community cases.)

- o that the limits may be extended up to 30 days in detention cases or 60 days in release cases when:
 - 1. necessary prosecution witnesses or evidence are not available;
 - 2. waiver proceedings are pending;
 - 3. motion for change of venue is pending;
 - 4. request for extradition is pending.
- o that the limits may be extended for specified periods if:
 - 1. the juvenile is a fugitive from the court or
 - 2. the juvenile or his attorney have agreed in writing to deferral for a specific time.
- o when the time limits are not met, the charges should be dismissed with prejudice.
- o detention orders may be appealed at any time, and juveniles are entitled to a hearing within 24 hours.
- o appeal of judgment and disposition of the juvenile detained pending appeal should be resolved within 90 days of the order unless the juvenile and his attorney agree to a delay in writing.

Recommendation: The Court Study Committee recommends that fact finding hearings in all juvenile cases be scheduled within 30 calendar days of the initial or detention hearing by the Court. Amendment of the existing Superior Court Juvenile Rules would appear to be the most effective method of effecting this change promptly, but a statutory change should also be sought.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that a fact finding hearing or trial, be held within 30 calendar days of the detention hearing for any juvenile in detention. The Code should further provide that when this time schedule is not met the juvenile is to be released from detention pending the fact finding hearing. (The Committee has recommended elsewhere that the Superior Court immediately adopt a rule requiring that the Corporation Counsel provide full discovery in juvenile cases at the initial or detention hearing -- see the Corporation Counsel Section of this Juvenile and Child Neglect Report.)

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that a fact finding hearing be held within 60 calendar days of the initial hearing for all juvenile cases, unless the delay is requested in writing by the juvenile's attorney, or the juvenile is a fugitive from the Court. The Code should further provide that when the time limit is not met, the case should be dismissed with prejudice.

Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to provide that status hearings be required in all juvenile cases within 20 calendar days of the detention or initial hearing by the Court. The amended Juvenile Rules should also provide that all motions filed but not heard by the time of the status hearing as well as pleas, consent decrees and dismissals shall be considered at that hearing as well. This status hearing should be combined with the detention review hearing in detention cases.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division develop, maintain, and periodically release statistics on the lapse times between all major court events for juvenile delinquency, P.I.N.S., and neglect cases handled by the Court. Exception reports covering each case exceeding the prescribed time limits should be furnished periodically to the Administrative Judge of the Family Division, the Chief Judge of the Superior Court, the Clerk of the Family Division, and released publicly.

Recommendation: The Court Study Committee recommends that the Superior Court Juvenile Rules be amended to require that disposition hearings be held within ten Court days of the fact finding hearing in detention cases, and within 15 Court days of the fact finding hearing in community cases. The amended rules should also provide that continuances beyond the ten or fifteen day period shall be granted only with the consent of the juvenile's attorney, and should not exceed ten calendar days unless good cause is shown.

The Court Study Committee is aware that a considerable burden would be placed on the Court initially to meet the new time limits proposed. Assignment of additional judges would be required for a period of a few months as was done by the Superior Court leadership in January, 1980 to deal decisively with the misdemeanor criminal caseload. Given the data, however, on the few cases which go to trial, and the prevalence of pleas, consent decrees and dismissals, it is the Committee's belief that the institution of pretrial status hearings and expedited action by Corporation Counsel would meet the major part of the burden created by the institution of time limits. Expansion of release before the initial hearing, of no petitioning, and diversion would also lessen the burden on judicial

resources. The Committee notes that the number of referrals to the Court has been declining fairly steadily since 1975 and the juvenile population of the District, particularly lower income youth, is declining.** It is further noted that the Social Services Division of the Superior Court has implemented a new policy in this area whereby predisposition reports are completed within 15 days for detention cases, and within 30 days in community or non-detention cases. The Division is to be commended for these steps. There is little disagreement that the preparation work for trials and dispositions can be accomplished within the recommended time limits. Therefore, the burden imposed by such limits will only be short term.

Conclusion

The Committee is recommending the preceding changes out of a concern that the result of the present juvenile detention practices and time lapses is to defeat the very purposes of the exercise of the Family Division's jurisdiction. So many youths of such diversity are incarcerated in overcrowded, understaffed facilities for such lengthy periods before the D.C. Superior Court holds a fact-finding hearing, or trial, that the care provided responds to the lowest common

** The Superior Court Statistical Reports show referrals for the past several years as follows:

1975	7,212
1976	6,826
1977	5,750
1978	5,882

denominator and results in jail-like conditions. No rehabilitation services are offered, education is geared to the lowest common needs, youths stagnate in uncomfortable, unhealthy idleness. Violence and maltreatment cannot be controlled readily and are exacerbated by overcrowding and inadequate staff-to-youth ratios.

Were more youths released and only the most in need of detention held before trial, and were the length of detention reduced, limited resources could be better tailored to assure less negative intervention. In this period of severe budgetary strain on the part of the District Government it may be tempting to dismiss the thrust of the foregoing recommendations as fiscally unrealistic. The recommendations bear serious study both for reasons of more effective intervention into the lives of youth coming before the Court and because lowering the high rate of custody and speeding the court process will likely reduce the costs of these programs overall.

C. Rehabilitating Youth in the
Juvenile Justice System

INTRODUCTION

The Juvenile Branch and the Neglect and Intrafamily Branch of Family Division of the D.C. Superior Court are successors to the D.C. Juvenile Court which existed prior to 1971. The history of the Juvenile Court in the District of Columbia parallels a national trend begun in Illinois at the end of the last century. Concern over mixing juveniles with adults in penal institutions and the belief that juveniles are malleable and receptive to rehabilitation led to the creation of separate facilities aimed at rehabilitation, and to the creation of a separate judicial process to serve this rehabilitative function.

Juvenile delinquency and child neglect cases are not only separated from adult criminal cases in distinct Divisions of the Superior Court but have different rules and proceedings based upon and justified by special functions in the juvenile areas. Certain procedural safeguards assured to adults in the criminal process have been determined by the U.S. Supreme Court to be constitutionally required for juveniles charged with delinquency." A number of these safeguards are codified in the D.C. Code through the 1970 D.C. Court Reform Act. A number of differences between the Court's handling of

" See for example the landmark Supreme Court case, In re Gault, 387, U.S. 1, 87 Supreme Court, 1428 (1967).

- 94 -

juveniles as compared with adults result from the distinct statutorily provided functions of the Superior Court Family Division. For example, in the District of Columbia juveniles have no right to a jury trial, and juveniles may be committed for indeterminate periods of time, which can exceed the maximum penalty imposed on adults for the same offense.

The 1970 D.C. Court Reform Act merged the old Juvenile Court into the D.C. Superior Court but maintained the juvenile area as a separate branch not in the criminal division, but rather in a Family Division. The underlying philosophy and purpose of court intervention do not appear to have been changed from the earlier period of the D.C. Juvenile Court to the present Superior Court Family Division. The purposes of the inclusion of juvenile court functions in the D.C. Superior Court were to reduce duplication of personnel and administrative activities, eliminate separate budgeting, separate administrative policies and regulations, to reduce attorney scheduling conflicts, and to increase the number of qualified judges sitting in juvenile and family cases.⁹⁹

Despite the fact that the need for special treatment is the rationale behind a separate court branch for juveniles it does not appear to the Court Study Committee that juvenile rehabilitation is accomplished effectively by the Superior Court or by the Department of Human Services. Rehabilitation in this context is defined generally to mean assuring the

⁹⁹ Op. Cit. Elliso Committee Report. Part 2. pg. 211.

- 95 -

provision of such resources and services to juveniles as to redirect their lives to those of productive, non-criminal individuals.

The 6,000 juveniles referred to the Superior Court annually as alleged delinquents and PINS have diverse characteristics. Many are poorly adjusted in school and function at grade levels below their age group; many have grown up in families weakened by poverty; some have serious emotional problems; and some have become entrenched in a criminal lifestyle. The Superior Court has an oversight role to insure that an appropriate range of rehabilitative services are available for juveniles. Such services would include individual, family and group counseling, education programs, health care, and vocational training. In fact, there is little accountability for what services are offered, or denied, juveniles between arrest, disposition, and review of disposition. The Court Study Committee was unable to discern any measure used by the Department of Human Services or the Superior Court for assessing the rehabilitation of juveniles under their supervision.

About 25% of juveniles arrested each year in the District of Columbia are formally identified by the Superior Court through trial and/or other Court disposition as needing rehabilitation. These youth are either sentenced to a period of probation, or committed to the Department of Human Services (DHS) for placement in institutions, group homes, and private residential facilities. Neither the Court nor the Department

of Human Services have stated rehabilitative objectives for these juveniles, individually or collectively. Rehabilitative services provided for the most part have not been evaluated, even in terms of their impact on juvenile recidivism. The Court Study Committee believes that it is unacceptable for the Superior Court to continue to order juveniles into probation or commitment without an assessment of the effectiveness of the "rehabilitative services". As a beginning the Court and the Department of Human Services should adopt the rehabilitative goals defined nationally:

- changing problem behavior patterns
- enhancing productivity in school/work
- strengthening family and other interpersonal relationships
- developing independent problem-solving skills

Using these goals, it should be possible to develop more specific criteria by which to evaluate and improve juvenile offender rehabilitation programs and services.

Recommendation: The Court Study Committee recommends that the Superior Court and the Department of Human Services adopt rehabilitative goals and objectives for youth passing through the District of Columbia juvenile justice system. Methods for assessing the attainment of established rehabilitative goals should be developed and used in both individual cases and aggregate types of cases, and rehabilitative programs.

In Section III-B of this Juvenile and Child Neglect Report, pretrial supervision findings and recommendation are offered, stating the Court Study Committee's belief that it

- 97 -

should be impermissible for the Superior Court Family Division to detain youths prior to trial for the purpose of rehabilitation. When juveniles are detained for permissible purposes (see preceding Subsection on Pretrial Supervision) rehabilitative services should be available, but participation by the youth should be voluntary. The Court Study Committee does not believe the District of Columbia can deny those necessities services and care to detained juveniles in a pretrial status which are normally provided to other youth outside the juvenile justice system -- i.e., education, medical care, adequate food and recreation.

It is crucial that rehabilitative services commence as soon after arrest as possible. Because of the juveniles' educational and emotional needs, and because of the implicit responsibility the Court has for the well-being of any child accepted into the juvenile justice process, the Court Study Committee believes that the Superior Court should insure that juveniles awaiting trial receive appropriate rehabilitative services on a voluntary basis at public or private agencies. As documented in the Burt Study and in the Superior Court Family Division statistical reports -- see Pretrial Supervision Section -- delays of several months between arrest and Court disposition are typical in juvenile cases in the District of Columbia Superior Court, and undercut the possible effectiveness of rehabilitation which does not commence until after Court disposition. Elsewhere in this Report the Court Study

- 98 -

Committee recommends statutory and court rule changes to assure that every juvenile accused of delinquent behavior is given a prompt fact finding hearing and Court disposition. The rehabilitative value of this reform alone on youth coming before the D.C. Superior Court would be significant.¹¹ For those found guilty the Court should assure that proven rehabilitative services, appropriate to the needs of the individual youth before the Court, are provided in a consistently timely manner.

Recommendation: The Court Study Committee recommends that the Superior Court leadership enunciate and enforce a public policy regarding the impermissability of detaining juveniles prior to trial to rehabilitate them; that juveniles in detention must be provided with the care which parents are expected to give their children (at least adequate education, housing, medical care and access to needed services), and that rehabilitative services be available pretrial for detained and released juveniles on a voluntary basis.

There are two public agencies primarily responsible for the rehabilitation of juveniles in the District of Columbia -- the Superior Court Social Services Division, and the D.C. Department of Human Services. In addition a number of private agencies and the D.C. Public School system are part of the city's rehabilitative network.

Of the 5451 juvenile cases disposed of by the Superior Court Family Division in 1978, 752 were given consent decrees, 540 were placed on probation, and 338 were given a suspended

¹¹ Slow court disposition of juvenile cases was among the most frequently mentioned concerns of persons interviewed by the Committee in the juvenile area.

- 99 -

commitment. About 300 adjudicated juveniles are committed to the Department of Human Services by judges of the Superior Court Family Division each year for rehabilitation. An unknown number of juveniles are referred to private agencies for services, prior to and following trial either directly by judges of the Court, or by Court Social Services staff, or Department of Human Services units.

I. Superior Court Social Services Division Juvenile Probation

The Social Services Division, Juvenile Branch is the rehabilitative arm of the Superior Court Family Division. Court. In 1970 the Ellison Committee Report commented on the inadequacies in the training of probation officers and criticized the former Juvenile Court for continuing juvenile cases for months (sometimes exceeding one year) pending social studies because of erratic calendaring of disposition hearings. Furthermore, the Ellison Committee Report noted that probation officers spent 20-40% of their time in court and up to 50% completing social studies, leaving little time for the supervision of youth. With caseloads averaging 90 per probation officer in the late 1960's, many probation officers could not see their clients even monthly. The Ellison Committee Report also criticized the court for "insufficient time to review probation cases and the absence of court supervision over probation dismissals".

Significant improvements have been made in juvenile probation since the Ellison Committee Report. Time in court

- 100 -

and in preparing social studies has been reduced for most Social Service Division staff by the use of a separate Intake and Diagnostic units. Caseloads are substantially lower. Probation officers interviewed by the Court Study Committee stated that they spend the majority of their time providing supervision although they complained about having too much paperwork. Probation officers are required to contact young people at least every week. As recommended by the Ellison Committee Report, juvenile probation services have been decentralized and are accessible in Northeast and Southeast Washington. Currently, the Superior Court Social Services Division has 30 line probation officers to supervise juveniles, an additional nine are in the intake unit, ten staff serve in the diagnostic unit, four staff are in the Child Guidance Clinic, and there are additional supervisory and administrative staff in the Social Service Division.

The Social Services Division juvenile probation officers supervise three categories of youth as determined by court disposition. Youth on consent decrees are generally supervised for six months. Those youth receiving a Court disposition of suspended commitment are under Social Service Division supervision for one or two years, as are those youth whose Court disposition is probation. Based on his/her individual characteristics, each juvenile in a probation

- 101 -

officer's caseload receives a pre-determined amount of supervision. Probation officers supervise and see youth as determined by a "classification level" based on selected predictability factors. This may range from weekly contacts to monthly contacts.

Resources available to the Court Study Committee did not permit any detailed empirical study of the Social Services Division of the Superior Court in the context of the 1970 D.C. Court Reform Act. The Committee interviewed sixteen line probation officers and supervisors within the Social Service Division as well as more than fifteen attorneys and judges with direct Superior Court Family Division experience. The purpose of these interviews was to learn the views of probation staff, attorneys, and judges, regarding the operation of the juvenile rehabilitative system in the District of Columbia.

Probation officers interviewed by the Committee and its staff were from each of the various field supervision units of the Social Service Division as well as from the intake, diagnostic and administrative management areas. The line probation officers interviewed expressed some dissatisfaction that many youth are seen less than once a week and virtually none are seen more than once a week. Contact with family and schools by the Social Services Division staff seems to vary widely among probation officers, seldom occurring, in the opinion of those interviewed, more than monthly for each client. Many staff complained that the paperwork burden, in

- 102 -

addition to the classification system used to place youth into different supervision categories, prevented probation officers from seeing their clients, families and schools with desired frequency. They estimated that they spend an average of 50% of their time in face-to-face contact with their clients, 30% in paperwork, and 20% in interagency contacts.

There was agreement among the persons interviewed by the Committee that juveniles on consent decrees receive few rehabilitative services from the Social Services Division. (Youth on consent decrees are reported to receive the same amount of services as youth on probation in the same classification level.) The Burt Study, involving a random sample of 200 juvenile cases coming before the Superior Court Family Division in 1977, found that 12 percent -- or 24 youth -- were given consent decrees, and that 33 percent of the 24 youth receiving this Court disposition had no previous conviction; that in 17 of the 24 cases the youth was arrested for a Part I felony, and that in no case was the consent decree extended or revoked."² One effect of the Superior Court Social Services Division classification system for determining how much time and effort to devote to a case is that consent decree cases are placed very low on probation officers' priority lists for services and for staff attention. It was not surprising therefore that lawyers and judges interviewed by the Committee,

² Op. cit. Burt Study, p. 23.

- 103 -

with regard to the consent decree area, generally ranked probation staff effectiveness between poor and fair in these cases.

The Court Study Committee was unable to discern any evaluative study of the consent decree option in the D.C. Superior Court. It appears to the Committee that under the current procedure Court intervention in consent decree cases contributes little to any rehabilitation of those juveniles receiving such dispositions. The original intent of the consent decree was to offer, without a fact-finding hearing a formal Court disposition, the services and oversight of the Court to juveniles who could not be released without some form of intervention, but who did not need a formal adjudication of probation or commitment to a secure facility. In the experience of defense counsel interviewed by the Court Study Committee, as well as the Committee members themselves, consent decrees in fact have come to be used as plea bargaining alternatives for cases which could be dismissed, or where conviction is likely. The Committee concludes that the consent decree provision of the 1970 D.C. Court Reform Act --D.C. Code 16-2314(a)-(d), -- serves no useful purpose which could not be satisfied by other dispositional choices.

Recommendation: The Court Study Committee recommends that the consent decree provision of the D.C. Court Reform Act be abolished. Preparatory to making this statutory change diversionary alternatives and referral agreements should be developed by the Superior Court Family Division leadership with assistance from the Social Services Division, the Corporation Counsel, the defense bar, and others. Additionally the Committee's recommendations in the

Counsel section of this Report also bear implementation. It is important that policy makers not solve the consent decree problem by an "administrative redefinition" of previously consent decree-eligible youth (as occurred earlier with status offenders and resulted in a reduction of services to this population).

Attorneys and judges interviewed felt probation officers' supervision of youth on probation or on suspended commitment was between fair and good. Criticisms included large caseloads, too little sympathy for youth, poor supervision by administrators, and little guidance from the Court. One interviewee commented that by the time a juvenile reaches probation supervision, such a degree of criminality exists that probation officers are unlikely to be successful in rehabilitation.

Many interviewees indicated that innovative, intensive individualized services were needed to help young people under Court Social Services Division supervision make changes in their lives. They criticized the Social Services Division for lacking a comprehensive service program for youth. This assessment was partially corroborated by probation officers interviewed who indicated that they cannot provide many of the services needed by their clients. Probation officers saw themselves as brokers for the other agencies' services for their clients. They want to rely on community resources but find them grossly inadequate, particularly services for families, appropriate educational placements, and residential treatment facilities. Thus, many probation officers neither provide sufficient services to their clients, nor are able to

locate suitable services in other agencies. Probation officers reported that the social study prepared on each youth under supervision describes the problems of each juvenile, but that matching services to identified needs is virtually impossible. The perspective of most of the interviewees both in and out of the Court was that probation supervision as currently provided is often not an effective tool for rehabilitation, primarily because of the lack of intensive services provided by probation officers and community agencies.

The Court Study Committee believes that certain hard decisions should be made by the Superior Court Social Services Division concerning its role and the utilization of its limited resources. If sufficient services in fact are unavailable in the community for referral, and cannot be developed to meet the needs of individual youth, the Social Services Division cannot then act primarily as a broker or referral agent and must accept more of a direct service role. If the Social Services Division has too few staff and other resources to provide the range of services deemed necessary for cases under its supervision it must allocate those resources to the cases realistically considered by the Division and the Court as most important, and/or for which community resources are unavailable. This would appear to require two actions: a survey and analysis of the availability and adequacy of external referral services, and a reevaluation of the needs of cases under supervision. In addition to the survey the Social Services Division could

- 106 -

meet with representatives of public and private community agencies to discuss ways they could improve their capacities and responsiveness to youth under supervision by the Social Services Division.

The Committee is cognizant that the Social Services Division has taken some important constructive steps to evaluate juvenile cases and assess the services recommended. However, more is required both in conjunction with the Board of Judges (as for example, the preceding recommendation of dropping consent decrees and placing youth when appropriate in diversionary programs earlier in the Court proceedings) and in expanding steps to involve private youth serving agencies. To the Committee's knowledge evaluative data does not exist in the District of Columbia on the effectiveness of the various service models. The Social Services Division's willingness since the Court Reform Act's passage to explore varying methods of meeting youths' service needs is to be commended, and should receive the active support of the Court leadership as regards social service programs expansions required in the future.

Recommendation: The Court Study Committee recommends that the Superior Court Family Division, in conjunction with the Social Services Division, formulate measures for the rehabilitation for youth handled by the Court, and that evaluative efforts be augmented to assess the effectiveness of the various procedural approaches for deploying Social Services Division staff to facilitate youths' rehabilitation. Experimental programs should be developed to: (1) provide a limited number of youth on probation with intensive

- 107 -

counseling, school and family services; and (2) compare these programs to ongoing regular services; and (3) change staff deployment policies as necessary.

Recommendation: The Court Study Committee recommends that an interagency group be convened by the Director, Social Services Division to assess needed services for youth on consent decrees, probation or commitment, and living at home. Where appropriate, the Family Division judicial leadership should forcefully advocate the expansion of needed services through new funding, ear-marking of existing services, or improved public/private agency cooperation. This inter-agency group should consider recommending to the Superior Court leadership and to the Joint Committee on Judicial Administration expansion and/or reallocation of the Court Social Services resources to increase particular types of services for those youth in the juvenile justice system who are now underserved.

The diagnostic unit of the Social Services Division was generally seen by those interviewed as supportive of the rehabilitative process, but the Child Guidance Clinic was criticized by interviewees outside the Division as not contributing to the treatment process. The Child Guidance Clinic (CGC) is composed of staff who complete psychological assessments on juveniles when requested by the Court. On the whole, interviewees were not satisfied with the work of the Child Guidance Clinic. Several attorneys interviewed indicated that they avoid requesting Child Guidance Clinic evaluations when they can go elsewhere. Child Guidance Clinic evaluations were reported by some as written in a way that often made them irrelevant to the court process.

- 108 -

Recommendation: The Court Study Committee recommends that the Superior Court leadership, in conjunction with the Director of the Social Services Division, take steps to have an objective assessment made of the services provided by the existing Child Guidance Clinic and that changes as appropriate be made following such evaluation. (The Committee takes note of the present broker service model being used by the Social Services Division and urges that extension of the concept to the psychological evaluation area be considered. Consideration should also be given to the development of independent consultant service agreements and other devices for providing diagnostic services when needed.)

2. Handling Status Offenders

For years juveniles who were "beyond control" of their parents were handled essentially as delinquents in the D.C. Court system, with disproportionately large numbers of them detained awaiting trial and then committed to a period of incarceration following trial. With the closing of Maple Glen, the D.C. Department of Human Services institution for status offenders, and the monitoring by the D.C. LEAA State Planning Agency of the District of Columbia's compliance with the Congressionally enacted LEAA mandate to remove all status offenders from secure facilities, the institutionalization of these youth in the District of Columbia has nearly ceased. While the District of Columbia Government has closed Maple Glen in order to maintain eligibility for matching grant fund support from L.E.A.A., nothing prevents the District Government from incarcerating such youth again. The District of Columbia Council needs to enact legislation prohibiting the

- 109 -

pretrial detention or post-conviction incarceration of juveniles in the Persons in Need-of-Supervision category.

Court Social Services intake staff now divert most beyond control, or PINS, cases to private agencies for family counseling. However, large gaps in services to status offenders continue to exist, especially in family counseling and effective school-related services.

An important positive step was taken within the past 18 months when an interagency committee was convened by the Director of the Superior Court Social Services Division to analyze the need for services for status offenders in the District of Columbia. The PINS Planning Committee proposed a low-cost plan for serving status offenders, relying on staff and other resources from Department of Human Services, the Superior Court, the D.C. Public Schools, the Office of Criminal Justice Plans and Analysis, and numerous private agencies. Comprehensive services, including shelter, counseling, and school intervention, were proposed. This collaboration represented a unique planning process to match juveniles' needs with services and Alan M. Schuman, the Director of Court Social Services, is to be commended for this initiative. Unfortunately, to date the proposed program has failed to move ahead because of insufficient funds.

Recommendation: The Court Study Committee recommends that Superior Court leadership strongly support the initiative of its Social Services Division in the handling of status offenders; that the important work of the PINS Planning Committee be continued; and that resources in public and private agencies be

identified to staff the interagency program proposed by the PINS Planning Committee.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to:
(1) prohibit the detention or commitment of status offenders in secure facilities, consistent with the national LEAA mandate; and
(2) permit police officers, through a formal mechanism, to refer youth with family and school problems directly to appropriate service agencies.

3. Department of Human Services, Youth Services Administration

About 320 adjudicated juveniles are committed to the custody of the Department of Human Services by the Superior Court Family Division each year for rehabilitation. The average age of these youth is 16 years, their reading level is fourth grade, and their typical institutional commitment (at Oak Hill and Cedar Knoll) lasts nine months. Although there is some evidence nationally that nine months in a rehabilitative program can produce psychological and academic improvements in juvenile offenders, the Department of Human Services has been widely criticized for its deficient institutional rehabilitation."² The Department of Human Services appears to conduct no systematic inquiry to measure the effectiveness of its youth rehabilitation programs. The Department neither does comparative entrance and release assessments nor compilations of individual treatment plan achievements. Other than juvenile recidivism rates

² Sarri, Rosemary and Hasenfeld, Yeheskel, editors. Brought to Justice? Juveniles, the Courts and the Law. National Assessment of Juvenile Corrections, Ann Arbor, Michigan, 1976.

- 111 -

generally, the only assessment of rehabilitation in the Department of Human Services which could be readily undertaken is to examine the services offered in the D.H.S. institutions.

Earlier in this subsection the basic elements of rehabilitation were set forth, including counseling to enable juvenile offenders to change their problem behavior patterns. In the District of Columbia, only a small minority of institutionalized youth received any services which can be considered rehabilitative including sustained individual or group counseling. The weaknesses of counseling services at Cedar Knoll and Oak Hill were documented in the 1978 District of Columbia Council Study of the Reorganization of the Department of Human Resources:

Staff for social and psychological services for committed youths exists at the institutions, yet these services fall short of their rehabilitative goals. Social workers and psychologists ostensibly provide therapy and counseling to assist youths in adjusting to life at the Children's Center and help prepare them for their return to their home community. In reality, the social workers and psychologists primarily perform administrative and diagnostic functions rather than therapeutic services.

While social workers are supposed to meet with each assigned youth once a week to provide counseling, to allow contacts with lawyers and probation officers, workers do not see most youths assigned to them with any regularity and that, frequently, requests made by residents for appointments are refused. Social services staff most often see residents when the worker is required to complete a mandated report.

Also, the psychological and psychiatric staffs do not adequately serve the youths at the Children's Center. Services are provided primarily to youths with the most severe

- 112 -

problems, and even those students are not seen on a regular, weekly basis.

Social services and psychological staff do not typically view themselves as part of a therapeutic process. As one social worker stated, "No one helps the kid get himself together." With much of their time doing paperwork generated by court orders and management directives, Cedar Knoll's psychologist, half-time psychologist and part-time secretary cannot properly serve the institution's 120 to 150 committed youths. While both social workers and psychologists participate in treatment team meetings to review resident's progress, they contribute principally as monitors of youths' behavior and minimize their role as advocates for youths' needs."⁴

Vocational services as part of a rehabilitation program can help young people feel that they are productive, raise their self-esteem, and prepare them for gainful employment. However, the vocational programs at the Department of Human Services (DHS) institutions are woefully deficient. They are not connected to job placement at release, they do not train youth for jobs for which there is demand, nor do they provide training certification, or apprenticeships. In some cases juveniles are not incarcerated long enough to complete good vocational programs at the institutions and there is no community follow-up. These problems were also

⁴⁴ Task Force on the Reorganization of the Department of Human Resources. A Report to the Council of the District of Columbia on the Operation of the Department of Human Resources, January 1978 p. 231-232. (This excellent report was prepared by the Council staff, consulting attorneys and advisors at the D.C. Council, but has received far less attention by the Department of Human Services, the Superior Court and others than it deserves.)

- 113 -

identified in the District of Columbia Council Study referenced above. The report stated:

. . . . vocational counseling is largely non-existent for institutionalized youths. A systematic job development programs has never been undertaken, and there is no connection between the institutions' vocational programs and job placement for youths upon their release.

The effectiveness of vocational training at the Children's Center is impaired by the absence of essential tools and equipment. For example, the paint shop instructor at Oak Hill must use his own tools and devote part of his work day to seeking donated work materials. In addition, his classroom lacks a spray booth even though painting jobs in the current employment market require spray painting skills. At Cedar Knoll, the data process class is conducted without an adequate computer which would facilitate teaching a broad variety of computer-related skills."

The connection between school problems and involvement in the juvenile justice system is well documented. Institution staff argue that juvenile offenders arrive with serious academic deficiencies for which they should not be expected to compensate in the average nine month period youth are incarcerated. However, young people must become literate and sufficiently competent in basic skills that they can improve their self-esteem, and move into productive roles in society. Moreover, evidence from such national programs as Read, Inc., indicates that with individual attention incarcerated youth can improve their reading by several grade levels in short periods of time.

" Ibid. pg. 229-29.

- 114 -

Regular educational programs at Cedar Knoll and Oak Hill do not significantly upgrade student performance. The size of classes and diversity of students alone prevent quality education. There are too few federally funded Elementary and Secondary Education Act Title I teachers in the juvenile institutions to offer quality education. These problems were also convincingly documented in the District of Columbia Council Study.

The principal rehabilitative activities for committed youths are the academic and vocational education programs at Cedar Knoll and Oak Hill. These programs are lacking because they are not primarily designed with youth's present and future needs in mind. Understaffing and insufficient teaching supplies are also major factors contributing to the inadequacy of the institutions' academic and vocational programs. Furthermore, the educational programs are weakened by the institutions' failure to coordinate their efforts with the public school system.

Educational programming at the Children's Center bears almost no relationship to the future needs of institutionalized youths this is apparent in the institutions' failure to offer specialized training preparation for high school equivalency tests (GED)"

The most flagrant evidence of understaffing is that substitute teachers are not employed for either the academic or vocational education programs at the Children's Center. Consequently, when a regular teacher is absent, students must either be assigned to another class for the day or remain idle in their cottages. Because of recurring absenteeism, which teachers claim is caused by job stresses, substantial numbers of students are frequently confined to their cottages playing

" Ibid, pg. 227-28.

- 115 -

cards or watching television when they should be learning in the classroom.

Even when all teachers are present, the academic and vocational programs are understaffed. The students at the institutions require close supervision and individual attention since they reflect a wide range of intellectual abilities and typically need extensive remedial instruction. However, classes of 15 to 20 students are common. The existing student/teacher ratio in the classroom does not permit needed individualized instruction. Teacher aides would ameliorate this situation, but are employed only for the Title I classes at Cedar Knoll and Oak Hill.⁹⁷

It is beyond the scope of the Court Study Committee to recommend changes in the Department of Human Services. However, the Superior Court, which has the principal oversight responsibility for youth appearing before it, must assure that juveniles receive appropriate care and services. The Court should insure that the following steps are taken by the Department of Human Services in the institutions:

- expand mental health services -- by hiring full-time therapists, developing a supervised graduate student program, streamlining paperwork, and enhancing the clinical skills of some cottage counselors -- so that each incarcerated youth is involved in individual counseling each week or group counseling twice a week.
- develop vocational programs which provide every released youth with marketable skills and job placement; such programs would require
 - (1) a plan developed with the assistance of employment experts;

⁹⁷ Ibid, pg. 228.

- 116 -

- (2) hiring additional vocational staff;
- (3) expanding the use of existing vocational classrooms and developing others;
- (4) career counseling for all youth; and job placement staff.

- strengthen academic programs by

- (1) doubling the number of teachers;
- (2) helping teachers develop innovative techniques, appropriate for troubled youth, to insure individualized teaching for most of each day;
- (3) develop a GED program, including taking the GED test, for all youth functioning at seventh grade level or above.

- develop alternatives to the institutions.

Recommendation: The Court Study Committee recommends that the Administrative Judge of the Family Division be responsible for assuring that the Court is provided sufficient information to enable an ongoing assessment of rehabilitative programs in terms of their meeting the needs of youth as identified in the treatment plans.

Recommendation: The Court Study Committee recommends that Superior Court Family Division Judges and Social Services Division leadership meet regularly with Department of Human Services staff to discuss the effectiveness of rehabilitative services for juveniles and strategies to improve them.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to articulate: (a) the goals of rehabilitation of juvenile offenders; (b) the oversight role of the Superior Court in this rehabilitation; (c) a requirement that individual juvenile treatment plans be placed in the official Court

- 117 -

Social file on each youth at the time of Court disposition; (d) the assessment of progress, as measured by these treatment plans at review hearings; and (e) a change of placement or release of juveniles who are not being effectively rehabilitated according to treatment programs. The Committee believes that D.C. Council should take the initiative in developing specific legislative approaches to implement this recommendation.

Too little information is available on the services, and success rate, of aftercare for youth released from institutions, and those placed directly by the Superior Court in group homes for committed youth. Committee investigation revealed that individual caseloads of 20 or more youth on aftercare and the slowness in transferring records (from the Court or the institutions to aftercare) make effective rehabilitation and timely follow-up extremely difficult. These young people need face-to-face counseling, school assistance, and job placement more than once a week. It could not be determined what proportion of aftercare cases receive the needed range of supportive services -- school assistance, job placement and counseling and individual or group counseling -- on any regular basis. The Court Study Committee believes that the Department of Human Services should be expected to evaluate, by objective criteria, the effectiveness of aftercare.

Recommendation: The Court Study Committee recommends that an evaluation of juvenile aftercare be undertaken. The Committee would encourage the Superior Court Family Division leadership, the Director, Social Services Division, and the Youth Services Administration of the Department of Human Services to work together in the development of the juvenile aftercare evaluation study. The Committee

- 118 -

also takes note of the availability of free technical assistance from the U.S. Department of Justice, O.J.J.D.P. to A.D. Little, Inc. to plan for or possibly conduct such an evaluation.

4. Superior Court Family Division Oversight

The role of the Superior Court in insuring that juveniles are rehabilitated is explicitly stated in the D.C. Code but is interpreted differently by each judge, by the Department of Human Services, by the Office of the Corporation Counsel, and by defense attorneys. Some interviewees expressed the view that the rehabilitative process is weak because probation officers are accountable to no one in terms of the youth's actual progress. (Accountability systems do exist within the Social Services Division for overseeing probation officers activities.) The judge does not ask for evidence that the youth is being rehabilitated, and documentation of real changes in young people (according to individualized treatment plans) is seldom required. Most attorneys and judges interviewed indicated that this accountability by individual probation officers is lacking from inside the Social Services Division and thus has to come from judges, most doubted that judges would consistently exercise these oversight responsibilities. Similar problems exist in the Court's oversight supervision of Department of Human Services rehabilitative efforts.

Judges have two primary ways to oversee the course of rehabilitation for juveniles:

- 119 -

- (1) by ordering at disposition that a juvenile receive special services, either as a condition of probation/commitment, or by committing him/her to a specific treatment facility; and
- (2) through review hearings at which probation officers or DHS workers are required to report on the juvenile's progress.

In cases where judges have ordered the Department of Human Services to place a committed juvenile in a facility in which the Department has no contract, or where the slots in the contract are full, the Department resists spending funds to follow through on these placements. The Burt Study data indicates that the review process is uneven, with two-thirds of juveniles having some form of review of probation or commitment after their dispositions. Specific treatment goals are seldom set, and hence are seldom assessed at reviews; instead the Court typically acts in a perfunctory way at the review hearings with the judge generally following the advice of the Social Services Division probation officer, or the Department of Human Services caseworker, regarding changes in the status of a juvenile. Judges rarely utilize reviews to assess the rehabilitation of juvenile offenders. Many attorneys fail to schedule reviews, and juveniles are not infrequently released from probation or commitment at the discretion of probation officers or DHS workers. A review is more likely to be held when the juvenile has violated the conditions of his/her disposition, rather than on a regular basis to routinely monitor the agencies' achievement of promised goals.

In re J.M.W., a January, 1980, ruling of the D.C. Court of Appeals, has raised questions about the role of the Court in monitoring the rehabilitation of juveniles. In dicta the Court indicated that "once the appellant was committed to the custody of the Social Rehabilitation Administration the Court relinquished its authority to determine the appropriate measures needed to insure rehabilitation." However, other parts of the opinion seem to contradict that statement. The decision has produced a lack of clarity about the role of the Court in reviews of probation and commitment, as well as in the Court's capacity to order the Department of Human Services to pay for and place juveniles in specific facilities.

The beginning of this subsection discusses the history of the rehabilitation function of the Court. D.C. Code 16-2203 and 2320 describe the continuing responsibility of the Court to oversee rehabilitation, and insure that the best interest of the juveniles is being served by the dispositional alternative chosen by the judge. The Committee believes the Court has abdicated the oversight role authorized by D.C. laws, requiring that it guarantee to juveniles the care they need from public service agencies. The Committee's interviews substantiate the view that the Court is often more protective of the Department of Human Services than of the juveniles over whom it exercises direct jurisdiction. Judges seldom require that quality services are actually delivered to juveniles, nor is the Department of Human Services asked to

- 121 -

demonstrate measurable effectiveness of its services. The Committee was interested to learn from several judges who routinely retain jurisdiction over all or most of their juvenile cases, where they preside over the fact-finding or the plea, of their view regarding DHS and Court Social Service diligence and concern. Specifically it seems that Superior Court Judges who keep their juvenile cases generally feel that the quality of attention and concern by the probation officer or DHS counselor is noticeably higher than when the judge does not retain jurisdiction. Judges explained that, in their experience, the development and the execution of the individual youth's rehabilitation program is enhanced where the judge maintains a continuing presence and concern. It appears that this judicial continuity affects both the youth and the Social Service professional assigned in the case. Because of the de facto abdication by the Court, juveniles are inadequately served by the City's agencies and the District of Columbia has no effective rehabilitation program for juveniles. The Committee urges the Superior Court to accept the vitally important leadership responsibility for enforcing delivery of effective services to youth in the juvenile justice system.

Recommendation: The Court Study Committee recommends that the Superior Court conduct a study of the role of the Court in overseeing rehabilitation, as measured by the achievement of treatment goals monitored in review hearings. Criteria for measuring success should be established so judges and others can be more knowledgeable about effective rehabilitation. Such a study would provide information to the Family Division about the effectiveness of efforts of

- 122 -

the Social Services Division and the Department of Human Services to re-direct juveniles.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that treatment plans be part of disposition orders and to require that all disposition orders in delinquency and PINS cases be reviewed at a hearing every six months. The Superior Court Family Division Clerk's Office should be responsible for scheduling the review hearings and notifying the juvenile, defense counsel, the probation or DHS worker, and the Corporation Counsel. The JUSTIN juvenile information system should be designed to monitor reviews and alert the Court to cases which have not been reviewed as required. This review hearing should not be perfunctory. A written report should be submitted indicating specifically whether the treatment goals are being met and the steps the worker is taking to meet them. Where the goals have not been met, the judge should either release the youth or order special services and another review within three months.

Recommendation: The Court Study Committee recommends that judges be responsible for the reviews of all cases in which they preside over fact-finding hearings or pleas, regardless of where the judge is sitting at the time of review.

5. Private Sector Rehabilitative Efforts

Little evaluation information exists to document the effectiveness of rehabilitative services offered to juveniles in the District of Columbia by private agencies. Community Advocates for Youth (an alternative to secure detention) the Delinquent Diversion Project (a consortium of private agencies under contract with the Superior Court Social Services Division), and the Restitution Project (operated by Social Services Division with two private agencies) are believed by some to be

- 123 -

effective programs in meeting the needs of delinquents and helping them discontinue their criminality. In contrast to most other rehabilitative efforts of the Superior Court and the Department of Human Services, these private sector programs have two features in common:

- (1) they offer intensive counseling and educational services, with a low staff/youth ratio, and
- (2) rehabilitation is initiated much sooner after arrest than in most programs.

The biggest obstacle to the private sector assisting the Court and the Department of Human Services with rehabilitation of juveniles is the lack of resources, a problem which can be expected to worsen particularly as LEAA funds are reduced.

Recommendation: The Court Study Committee recommends that the Superior Court evaluate directly or contract for an assessment of the effectiveness of existing alternative juvenile rehabilitative programs employed by the Superior Court Family Division such as the Community Advocates for Youth, the Diversion Project, and the Restitution Project.

- 124 -

SECTION IV SYSTEMS COMMON TO THE SUPERIOR COURT FAMILY DIVISION

A. Juvenile Delinquency and Neglect Prosecution
Function - The Office of The Corporation CounselIntroduction

The focus of the Court Study Committee's reports is the District of Columbia Court system. Legally and conceptually, the Office of the Corporation Counsel is not part of the D.C. Court system. However, the operations of the Corporation Counsel's office are so deeply imbedded in the operations of the Superior Court Family Division that the Committee felt that it should, at a minimum, make some observations on the functioning of the Corporation Counsel's Family Division Section."

In general, our observation is that many of the same serious problems that the Office of the Corporation Counsel experienced ten years ago when the Ellison Committee Report on the D.C. Courts was written still exist in that office today. The Court Study Committee believes the failure to rectify those problems in the intervening ten years cannot be condoned.

One general theme that runs throughout our observations of the Office of the Corporation Counsel is the consistent and persistent understaffing, undersupport, undermanagement, and undernourishment of the Family Division Section by the

" The official title of this office is the "Juvenile Section of the Criminal Division of the Office of the Corporation Counsel." The descriptive term "Family Division Section" has been used throughout this section of the report because that office also handles non-criminal neglect matters.

- 125 -

Office of the Corporation Counsel as a whole. While to some extent that undernourishment simply reflects a pervasive societal indifference to the problems of juvenile delinquency and child neglect, to another extent it must be seen as a policy decision on the part of those who manage that office. To the extent that a policy decision has been made, or to the extent that policy has been set by neglect, the Committee deplores the resultant shortcomings in the operation of the Family Division Section of the Corporation Counsel.

The upgrading of the quality of the work of the Corporation Counsel in the Superior Court Family Division is an essential component of any overall program of improvement for the Court in the juvenile and neglect areas. (The Court Study Committee received correspondence from the D.C. Corporation Counsel during its preparation of this section of the overall juvenile and neglect report regarding some of the past and future steps being taken to remedy many of the long-standing operational deficiencies. The Court Study Committee is encouraged by the priority attention that the Family Division Section of the Corporation Counsel is receiving. Nevertheless, we feel compelled to underscore the persistence of the problems and the need for diligence by the Corporation Counsel leadership, the Mayor, the D.C. Council and others in finding solutions.)

Many of the problems discussed here are not of the Corporation Counsel's making. The Office operates in a system

- 126 -

that imposes many constraints -- too few resources, too many cases, too few judges, and so on. However, the Corporation Counsel's Family Division Section must become an active force for breaking out of the cycle of interlocking problems known as "the system." In order to become such a force, the Court Study Committee believes the Corporation Counsel must first set its own house in order. Conscientious members of the Corporation Counsel's office are aware of the problems and are seeking solutions. The Committee, however, concludes that the Family Division Section of the Corporation Counsel's office has not been effective in achieving long-term improvement in the quality of its operations in the D.C. Superior Court Family Division.

1. Staffing

The Family Division Section of the Office of the Corporation Counsel consists of fourteen staff attorney positions and two supervisory positions. If all sixteen staff positions were filled, two Assistant Corporation Counsel would be assigned to the New Referrals Court, eight would be assigned to the trial of delinquency cases, and four would be assigned to the trial of neglect cases.

In addressing the issue of staffing, the Court Study Committee looked at two aspects of the problem -- authorized positions and filled positions.

- 127 -

a. Authorized Positions.

Even if the fourteen attorney and two supervisory staff positions were kept filled, there is serious question whether that authorized staffing level would be appropriate to the task. Certainly in some absolute sense it is not. It is estimated that forty percent of all serious crimes in the District of Columbia are committed by juveniles. Prosecution responsibility for these cases rests with the Office of the Corporation Counsel. The remaining sixty percent of serious crimes committed by adults are prosecuted by the Office of the United States Attorney the staff of which approximately one hundred Assistant United States Attorneys. In comparison, the estimated forty percent of serious crimes committed by juveniles are prosecuted by ten Assistant Corporation Counsel. The disparity is obvious, even when one takes into account additional burdens on the adult criminal justice system prosecutors (grand juries, jury trials, etc.).

The problem is equally acute in the child neglect area. About 500 new neglect cases are filed each year, and the cases tend to remain in the D.C. Superior Court and juvenile justice system for extended periods of time. In the view of the Court Study Committee, four Assistant Corporation Counsel are plainly inadequate to manage a caseload of this dimension.

A note of caution is necessary in reaching conclusions in this area. The Court Study Committee has no doubt that the current number of authorized positions is inadequate

- 128 -

to the task. A certain number of additional Assistant Corporation Counsel would undoubtedly yield short-term gains in the quality of the performance of the Office of the Corporation Counsel before the Superior Court Family Division. However, given the number of judges currently assigned to the Superior Court Family Division and the limited role that the Corporation Counsel presently plays in the disposition of juvenile cases (see subsequent subsection entitled "Disposition Hearings"), the quality of the advocacy in the Superior Court cannot be increased simply by adding infinitely more Assistant Corporation Counsel. At some point, the other parts of the D.C. juvenile justice system must respond with one or more of the following: more effective court calendar management, additional judges, additional probation officers, additional dispositional alternatives, and/or additional facilities must be provided in order to result in a measurable improvement in the Superior Court juvenile functions.

This theoretical problem should not, however, distract the Corporation Counsel's attention from the immediate need in the Family Division Section -- more adequate staffing. In the view of the Court Study Committee, no solution other than adequate staffing will solve the intractable problems that have haunted the Corporation Counsel's Family Division Section for many years: inadequate discovery given to defense counsel; inadequate representation of the government at disposition hearings; and too many requests for continuances.

- 129 -

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel increase at once the number of authorized attorney and support positions in the Family Division Section. The Committee urges the appropriate D.C. Bar Division(s) and other bar groups to support this request before the D.C. Council and the Congress.

b. Filled Positions.

When one examines over the long run the performance of the Office of the Corporation Counsel in actually keeping the sixteen attorney staff positions authorized for the Family Division Section filled, the record is deficient. The number of Assistant Corporation Counsel actually assigned to the Section over the years has floated up and down between a full staff of sixteen Assistant Corporation Counsel to a low of ten Assistants, and has generally stayed toward the lower end of the range. The Section is almost never fully staffed, and the problem of unfilled positions seems to recur on a periodic basis. When this Committee began to look into this problem in the Fall, 1979, it was assured that urgent action was being taken to remedy the problem of unfilled slots. As the report was being drafted in the late Spring of 1980, the staffing problem had not improved measurably. The Committee takes particular note of the methods and procedures employed by the Public Defender Service and the Office of the U.S. Attorney to assure a full staffing complement at any given point in time and suggests consideration be given by the Corporation Counsel to those approaches where useful.

- 130 -

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel take necessary management steps to maintain full authorized staffing of the Family Division Section at all times.

2. Management

Interviews conducted by the Court Study Committee and the personal knowledge of some Committee members reveals a consistent theme that the Office of the Corporation Counsel in the Family Division Section is not well managed. The various individuals who have served as Corporation Counsel over the past ten years, as well as other managers of the Office, apparently have been unwilling to focus on the serious management deficiencies in the Family Division Section. Although the situation has been well-known to most of the people who work in, or have contact with, the Office of the Corporation Counsel Family Division Section, the void in leadership in the Family Division Section has been permitted to continue for some years. This void has been, to a substantial degree, filled by various ad interim efforts. The management of the Family Division Section has tended to emphasize putting out of daily fires at the expense of long-range solutions to recurrent problems. This catch-as-catch-can system has not resulted, in the view of the Court Study Committee, in effective management of the Family Division Section. This neglect suggests the low priority assigned the Family Division Section of the Office of the Corporation Counsel by the management of the overall Office.

- 131 -

The Corporation Counsel Family Division Section is under the overall supervision of a Deputy Corporation Counsel whose responsibilities include not only the Family Division Section but also the Law Enforcement Section. The incumbent in that office is currently managing the Law Enforcement Section of the Corporation Counsel's Office on a day-to-day basis. The result is that, despite an apparently sincere desire to upgrade the workings of the Family Division Section, the person who might advocate most vigorously on behalf of the Family Division Section in the setting of policy, the procuring of needed resources, and other important managerial functions, is understandably somewhat preoccupied with other problems.

The immediate managers of the Family Division Section have failed to provide pressure for higher standards of performance, innovation toward solution of the recurrent problems of the office, leadership to the largely demoralized staff, or methods of coping with the bureaucratic tangle in the Office of the Corporation Counsel as a whole. Forecful leadership can and would do more. The Court Study Committee has no doubt that the present incumbents are sincere, hard-working individuals. But too often the tone of their management has been to settle for the status quo, to give in to the constraints of working in an uncaring and sometimes hostile environment, and to manage today's crisis while letting tomorrow's wait. They must share the responsibility for the less-than-satisfactory

- 132 -

results with the managerial superstructure of the Corporation Counsel's Office, which provides them with too little support, too little encouragement, and too few managers.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel strengthen the administration of their Family Division Section: 1) by devoting sufficient management resources to it; and 2) by moving aggressively to correct management problems when they arise.

The fact that the Family Division Section has been consistently deprived of forceful leadership is reflected in a number of practices prevalent in that office. For instance, the office has almost no written guidelines concerning such matters as petitioning and acceptance of plea bargains for use by Assistant Corporation Counsel assigned to the office. While reasonably complete written materials do exist concerning the Major Offenders Program in the Family Division Section, the balance of the written materials available to the Assistants in the Family Division Section consists of an assortment of memos dealing with a jumble of administrative topics such as work hours and personal use of telephones.

Attorneys assigned to the Family Division Section have yet to be provided with comprehensive written statements of office policy or Family Division practice.⁹⁹ While written manuals alone will not solve the problems of the Family Division Section of the Corporation Counsel, the lack

⁹⁹ The Committee was informed that manuals are now in preparation.

- 133 -

of such manuals is symptomatic of the management void that has long existed in that office.

The management problems have led to serious morale problems in the Family Division Section with a concomitant drop-off in the quality of advocacy.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel Family Division Section develop written guidelines for staff attorneys concerning guilty pleas, consent decrees, dispositions, and the like.

3. Recruitment and Training.

The Committee encountered a striking deficiency in the areas of recruitment and training.

Recruitment for the Family Division Section has in the past apparently been carried on by the Office of the Corporation counsel in an ad hoc manner. When the number of positions unfilled in the office becomes critical, effort is made to find attorneys to fill these positions. The result is that the office frequently recruits out-of-phase with the academic school year. Therefore, the opportunities to attract the best law students into the Corporation Counsel's office are minimal.

A more effective recruitment method for the Corporation Counsel would be to conform its schedule to the recruitment schedules of area law firms, the United States Attorney's Office, and the Public Defender Service. When the Corporation Counsel recruits attorneys, it is typically looking for people

- 134 -

to fill positions immediately. This short time-frame eliminates persons from consideration who are trying to plan their careers ahead, or who need to give lengthy departure notice at their present jobs. In order to attract qualified candidates and to keep the office fully staffed, the Office of the Corporation Counsel must project its personnel needs ahead and recruit in advance of positions actually falling vacant.

To the knowledge of the Court Study Committee, the Office of the Corporation Counsel does not recruit either at area law schools or at law schools outside the District of Columbia. Nor does there appear to be any systemized method of evaluating applicants who do apply.

The Corporation Counsel's Office seems to be acutely aware of its problems in the recruitment area and the Committee is encouraged that solutions are being implemented. Even a more rational recruitment system will continue to be hampered by the requirement that applicants be, or become, District residents, by the fact that there are no jury trials in the Superior Court Family Division, and by the generally low prestige of Family Division practice. Given these constraints, it is all the more important that the Corporation Counsel systematize its efforts to recruit the highest quality attorneys.

The current ad hoc system of attorney recruitment and selection by the Office of the Corporation Counsel does not appear to have resulted in any patronage abuse. However, the lack of any systematized procedure in this area is an invitation to future abuse.

- 135 -

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel systematize its recruitment of new attorneys and plan ahead so that positions are filled when they become vacant.

New members of the Corporation Counsel's office, once recruited, receive largely unstructured and generally ad hoc training. Typically, a new Assistant Corporation Counsel assigned to the Family Division Section is taken into the Superior Court Family Division New Referrals Court for a day or two by a more experienced attorney from the Section. After that brief exposure to one part of the system, the new Assistant is assigned his/her own cases. All remaining training is on-the-job. By way of contrast, the United States Attorney's Office, the Public Defender Service, the Superior Court Trial Lawyers Association, and the various law student clinical programs all devote substantial resources to formalized training programs lasting several weeks in most instances.

The Court Study Committee finds that the Office of the Corporation Counsel for the most part has failed to utilize the training resources that are available to it. The Corporation Counsel does permit staff attorneys to attend the Criminal Practice Institute of the Young Lawyers Section of the Bar Association of the District of Columbia, and some Assistant Corporation Counsel have attended the Advocacy Institute sponsored by the U.S. Department of Justice. However, there is no regular office policy concerning attorney training.

- 136 -

The quality of advocacy in the Corporation Counsel Family Division Section is uneven and not as high as it should be. Part of the problem must be attributed to the failure of the Office to recruit and train attorneys on a rational basis.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel institute regular training programs for new Assistant Corporation Counsel, utilizing wherever possible, resources external to the office, already available in the community.

4. Discovery

One of the most persistent complaints about the operation of the Family Division Section of the Office of the Corporation Counsel encountered by this Committee is the failure of that Office to give adequate discovery. Although the problem is undoubtedly compounded by defense attorneys who do not seek the limited discovery now available, the universal testimony of those conscientious attorneys interviewed who do try to get discovery from the Office of the Corporation Counsel is that discovery is difficult to get and meager when obtained.

The problems in getting discovery in juvenile cases include the difficulty of learning which Assistant Corporation Counsel is assigned to the case; the fact that the Assistants themselves have inadequate time to prepare the cases and are thus unable to give discovery; difficulties in locating Assistants knowledgeable about particular cases; and the generally low priority assigned to the task of discovery

- 137 -

by the Office of the Corporation Counsel.¹⁰⁰ When discovery is given, the Corporation Counsel Family Division Section has made a judgment that in delinquency cases it will generally not go beyond the discovery required by Rule 16, of the Superior Court Juvenile Rules. The Committee questions the wisdom of limiting discovery to the statutory minimum and suggests that the Office consider going beyond the parameters of the rule.

The Court Study Committee is impressed with the importance of adequate discovery for the efficient, timely, and effective administration of justice in the Superior Court Family Division. Good discovery tends to lead to high pre-trial disposition rates and to fairer trials in those cases in which an early disposition is not reached. The Court Study Committee believes the Office of the Corporation Counsel should assign a much higher priority to the task of giving discovery and should consider and adopt innovative ways to make discovery available. For instance, all of the principals in a case -- the respondent, his or her attorney, the Corporation Counsel, and the police officer -- are present in Court on the day of the new referrals hearing. This might be an

¹⁰⁰ One reason Assistant Corporation Counsel are unprepared to give discovery is that they do not usually focus on the file until the day of trial. This situation is dictated by a system in which each Assistant is expected to prepare five or six cases for trial each day. The Family Division Section is attempting to implement, with the cooperation of the Court, a status hearing system. It is hoped that this system will so drastically reduce the number of cases set for trial each day that the Assistant Corporation Counsel can be better prepared.

- 138 -

appropriate time, in the afternoon after the New Referrals Court slows down, to consider giving discovery of the material that is then available. Discovery at this early point in the progress of a case might reduce considerably the lag-time between papering and disposition of delinquency cases in the Superior Court Family Division. Little purpose is served by the waiting time between the papering and the first trial date. The file is typically largely neglected until a day or two before the first trial date.

Recommendation: The Court Study Committee recommends that the Office of the Corporation Counsel give full and complete discovery in all delinquency, PINS, and neglect cases beginning on the day of the initial or detention hearing.

5. Motions

Motions filed pre-trial in delinquency cases in the District of Columbia Superior Court are often continued to the day of trial, a practice that is particularly inappropriate in a system in which the judge who heard the motions on the day of trial is also the trier of fact and will decide guilt or innocence. The willingness of the overburdened Motions Judge to continue these matters to the day of trial has removed what little incentive there is for counsel to be ready on motions day. Therefore, although being ready on motions day is the responsibility of all counsel, the Court Study Committee favors the extension of the existing Adult Criminal Rule 12-I(e)(g) to the Family Division so that the Motions Judge

- 139 -

would treat all motions not ready -- either because Corporation Counsel or defense counsel is not ready to go forward -- as conceded.

Recommendation: The Court Study Committee recommends the amendment of the Superior Court Family Division Rules to provide that the Juvenile Motions Judge shall routinely dismiss, or grant by default, any motion in which without good cause shown either the defense, or the Corporation Counsel, is not ready to proceed on the day assigned for hearing motions.

6. Disposition Hearing.

The Corporation Counsel takes no part in routine disposition hearings. The Court Study Committee believes this practice cannot be defended. The Office of the Corporation Counsel should be present at disposition hearings and should advocate the government's point of view as vigorously as possible. The Office should actively seek appropriate placements for juveniles. Although the practice of not attending disposition hearings (except in those major offender cases where the office asks to be notified and does attend) does help to control the workload of an overburdened prosecutor's office, the Committee does not feel that the practice is justifiable. The failure of the Corporation Counsel even to appear at what, in all likelihood, is the most critical phase of a juvenile proceeding, is not defensible.

Recommendation: The Court Study Committee recommends that the Corporation Counsel routinely appear at disposition hearings in neglect, delinquency, and PINS cases and advocate, in writing wherever possible, on behalf of the government.

- 140 -

7. Consistent Policies.

The Office of the Corporation Counsel over the years has not developed coherent office policies concerning such matters as when cases should be papered versus being dropped, and when plea bargains and consent decrees should be accepted. Assistant Corporation Counsel are supervised by administrators in that cases are reviewed at papering, at the motions stage, and when pleas and consent decrees are accepted in some cases. All files are reviewed when they are closed. But because there is more than one administrator and no written guidelines, the result of the review may vary from case to case and supervisor to supervisor. Although much of the solution to the lack of coherence in office policies is subsumed in recommendations earlier in this Section concerning the necessity of written guidelines and the need for uniform office policies, whether written or not, the problem is so acute that the Committee has chosen to state and emphasize the need separately.

8. Conclusion.

While improvements have been made in the operation of the Corporation Counsel Family Division Section since the 1970 D.C. Court Reform Act, much remains to be done. For the reasons stated in the body of this Section, the quality of advocacy on behalf of the citizens' of the District of Columbia by the District Government in the Superior Court Family Division is uneven and all-too-frequently inadequate.

- 141 -

B: The Defense Function in the
Juvenile and Neglect CasesINTRODUCTION

Over ten years ago the Ellison Committee reported that representation by defense counsel in juvenile cases was fragmented, inequitably distributed, and subject to personality considerations and misallocation of resources. There was a backlog of cases awaiting appointment of counsel, and the entire system operated in a grossly inefficient manner. The main recommendations made by the Ellison Committee in this area were that the appointment of counsel should be automatic in all cases and should be made very early in the process, certainly before any Court hearings. The Superior court leadership has implemented this critically important recommendation. While the implementation of these recommendations has eliminated many of the pre-1971 shortcomings of the counsel appointment system, and has fostered significant improvements, it has not resulted in the consistent provision of effective representation.

Although some dedicated private attorneys, public defenders, and law student programs provide excellent representation for clients in the Superior Court Family Division, the Court Study Committee perceived a widespread feeling among clients, judges, court staff, and lawyers themselves that the representation in delinquency, PINS, and neglect proceedings is significantly inadequate. The shortcomings include lack of

communication between lawyer and client, inadequate investigation, occasional non-appearance of counsel at hearings, failure to file motions, lack of litigation skills, and an absence of efforts to secure proper dispositions. Pinpointing the causes for poor representation, however, is not simple. While many factors are involved, negligence on the part of lawyers appears to exist to a significant degree and is tolerated to an intolerable degree.

D.C. Code § 16-2304 provides that counsel is to be appointed for all children alleged to be delinquent, neglected or in need of supervision. It also provides that parents, guardians or custodians of children named in neglect and termination proceedings are entitled to counsel. Those unable to afford retained counsel are to be provided a court-appointed attorney.

The District of Columbia Criminal Justice Act, D.C. Code § 11-2601 et seq. provides for payment to appointed counsel in delinquency and need of supervision (PINS) cases. For an attorney to be eligible to represent indigent litigants before the Superior Court, one must only fill out a form, submit it, and appear at the Criminal Justice Act office on a designated day to obtain appointments. As a general rule, assignments in juvenile detention cases are made by a Criminal Justice Act program administrative officer, except in homicide cases where they are made by a judge. The only check on the

- 143 -

quality of the attorney, given the appointment by the administrator, is an approval by the judge sitting in New Referrals Court. In fact, few appointments are ever vetoed by a judge. In community (non-detention) cases, the hearing commissioner appoints from the attorney pool for the day. There is no effective review by a judge of these decisions.

Child neglect cases pose special representational problems since no funds are provided by the Criminal Justice Act for attorneys appointed to represent children or parents. The children in neglect cases are represented by members of the Superior Court Volunteer Attorney Office, or by law students. In the past, the methods of operation of both programs provided fragmented representation in most cases. The Volunteer Attorney Office has recently received a federal grant to improve the quality of legal services provided to its child neglect and abuse clients. The student programs are also coordinated by the Volunteer Attorney Office to minimize fragmentation.

Attorneys for parents are appointed by the C.J.A. Administrator on a catch-as-catch-can basis. Since no CJA funds are allocated for neglect cases, attorneys must take cases on a pro bono basis as a condition to being appointed to delinquency and PINS cases. When neglect cases come into the CJA Administrator's office, they are assigned to the attorneys available for appointment that day. If the available attorney happens already to be carrying a heavy load of neglect cases, he or she is asked merely to stand in as counsel during the

- 144 -

initial hearing. Afterward, the case jacket is returned to the CJA Administrator who assigns it to another attorney on the appointment calendar for that month.

Compensation for the private attorney appointed to represent juveniles in delinquency and PINS cases is available through the CJA program. The District of Columbia Criminal Justice Act, which is keyed to the fee scale of the Federal Criminal Justice Act, allows for hourly fees of \$30.00 for in-court services and \$20.00 for out of court services. The maximum amount payable for representation in felony-type cases is \$1,000.00, and the maximum payable for cases involving offenses which would amount to a misdemeanor in the adult system is \$400.00. No attorney may accumulate more than \$42,000.00 in CJA funds per year. Public Defender Service attorneys who represent only children in delinquency and PINS cases are salaried government employees. Law students providing representation are not reimbursed. Their supervisors are paid by their respective law schools. Once an appointment is made, the attorney is expected to represent the client at all subsequent hearings. In the Superior Court Family Division this includes a series of reviews of disposition that can continue until the child reaches the age of 21. As a practical matter, stand-in counsel appears quite often after the disposition hearing, especially in neglect cases.

There appear to be two major factors contributing to the erratic level of representation in the Juvenile Branch of

- 145 -

the Superior Court Family Division. The first is the absence of any form of quality control. The second relates to fees. Other issues and areas inter-relate with these overall factors and are discussed below.

1. Quality Control

The lack of quality control in the juvenile defense counsel assignment system in the D.C. Superior Court is astounding. Virtually anyone who is a member of the D.C. Bar may walk into the CJA office on the fifth day of the month and, if his/her name comes up in the alphabetical call, be guaranteed appointment to cases on two or more days of the upcoming month. Although the District of Columbia Criminal Justice Act requires that attorneys be "selected from panels of attorneys designated and approved by the Courts," there is in practice no evaluation or approval of the attorneys before they are appointed. The CJA attorney application evidences at least an attempt to obtain the attorney's educational background and trial experience. In reality, however, the application is never reviewed and, to the Committee's knowledge, no one has been denied the initial opportunity to be placed on the calendar.

The only discernible quality control in the entire system is the unofficial discretion exercised by the CJA Administrative Officer at the time of the appointment. The officer, who is apparently familiar with almost all of the attorneys who participate and has at least an idea of the amount of effort an attorney is willing to exert, does not

- 146 -

have the authority to deny an attorney a case. She will, however, use her discretion in deciding what kind of case to assign. For example, the former CJA administrator would not assign a new attorney or one she feared would not provide zealous representation to a felony case. Instead she would assign him or her to a misdemeanor case. The Administrator, however, has no legal training. Her impressions, while often accurate, are more reflective of a person's general reputation at the Courthouse than of any substantive objective criteria.

The amount of discretion exercised by the CJA Administrator is generally determined by which judge is sitting in New Referrals Court at the time. The majority of judges allow the administrator to assign all of the cases on her own. Though the judge has the power to veto the appointments, the power is rarely exercised in practice. A few judges prefer to have the names of the attorneys brought to them so that they can make the appointments themselves.

Once an attorney is in the CJA appointment program, there seems to be no method of excluding him or her from future representation, regardless of performance. There are no formal evaluations of an attorney's performance in a particular case and no periodic reviews of his overall representation. If a judge is particularly displeased with an attorney's performance, he can instruct the assignment officer not to assign the attorney to any future cases coming before him, but even this is rarely done.

- 147 -

In short, there is presently no attempt to screen the attorneys by the Superior Court or by the D.C. Bar before they enter the CJA system to ensure that adequate representation is provided and no method of excluding attorneys who provide inadequate representation. Unless all judges sitting in the Superior Court Family Division refused to allow an attorney to appear before them, which is an unlikely occurrence, virtually anyone could be placed on the assignment calendar and continue to pick up cases regardless of past performance.

There are, of course, reasons not to have judges alone responsible for the exclusion of attorneys from CJA eligibility. Further, the goal of the system is not the exclusion of attorneys, but the development of a cadre of well-trained attorneys who provide good representation. While requiring a certain amount of experience as a prerequisite to appointment might provide some check on competence, it does little to improve the quality of current practitioners who can meet those criteria. It is the view of the Court Study Committee that a better approach to the quality control problem is to develop an attorney training program which must be completed by all attorneys prior to placement on the CJA appointment lists. Further, periodic participation in a continuing education program should be required for continued eligibility. (The reader is referred to the subsection which follows next

- 148 -

on Appointment and Removal for discussion of Bar and Court initiatives in this area.)

2. Training

No training program currently exists for attorneys starting practice in the D.C. Superior Court Family Division. To the contrary, many people, including the Public Defender Service see the Superior Court Family Division as a training ground for young lawyers.¹⁸¹ The results, of course, are obvious.

Some skills learned at the Annual Criminal Practice Institute are transferable to delinquency cases, and general skills developed at the D.C. Bar's continuing legal education programs also may generally relate to the Superior Court Family Division. But there is no single program, or series of programs, which trains attorneys in the area of Family Division law and practice, either juvenile delinquency or neglect. Nor is participation in those programs which do exist related to being selected to handle appointed cases before the Superior Court Family Division. Further, except for general sociology and psychology courses that an attorney may have taken in college, training in family dynamics, child development, educational assessment and strategy, or cultural patterns of

¹⁸¹ The Public Defender Services does, however, train its staff before their entry into the Family Division. The law student programs also provide training to members of the clinic. While some people have suggested opening P.D.S. training to the private bar, it does not appear feasible at present.

contemporary youth is non-existent.¹⁸² Rather than being a simple, informal court where litigation techniques can be tested and perfected for future use, the D.C. Superior Court Family Division is a complex system requiring attorneys who are knowledgeable in litigation techniques, in criminal law,¹⁸³ in civil practice,¹⁸⁴ in administrative law,¹⁸⁵ and in theories relating to psychiatry, psychology, and education.¹⁸⁶ In the absence of training in these areas, it is inconceivable that a child or parent will receive first-rate representation.

¹⁸² Several Juvenile Practice Institutes have been held. None, however, was based on a multidisciplinary approach to juvenile problems and all concentrated on delinquency cases.

¹⁸³ The Superior Court Family Division Rules for delinquency cases and the case law governing offenses giving rise to delinquency are virtually identical to those governing the adult criminal court.

¹⁸⁴ For example, the discovery rules for Family Division neglect proceedings, though seldom used, are identical to those of the Civil Division.

¹⁸⁵ A large number of juveniles appearing in the Family Division are probably eligible for special education grants. The procedures for obtaining these grants are contained in the administrative rules of the D.C. School Board and are governed by the Administrative Procedures Act. A large number of children coming through the Juvenile Branch of the Superior Court Family Division are in need of such placements. A number of Superior Court Family Division judges recognize that a good educational placement for a given child may be a far more appropriate disposition in terms of rehabilitating the youth than a term of institutionalization. To obtain such an educational placement, however, an administrative proceeding may have to be initiated by the attorney.

¹⁸⁶ Attorneys for children in neglect cases also serve as guardians *ad litem* and are required to evaluate matters not purely legal. Attorneys in delinquency cases also must assess disposition alternatives which require more than a knowledge of criminal law.

- 150 -

In the view of the Court Study Committee, much of the blame in this area rests with the Bar. For years, the organized Bar has treated the Superior Court Family Division with less-than-adequate concern. Attorneys practicing there have been viewed as less-than-real lawyers, and the cases are looked upon as involving less than legal problems. Before the Superior Court can be expected to make substantial changes, the Bar itself must upgrade its perception and competency in this area of law.

The advantages to both lawyers and clients of training programs are obvious. Several state bar associations require members to participate in C.L.E. courses periodically to maintain their membership in good standing. Programs can be developed and offered on a periodic basis to provide training. Given the questionable current level of representation before the Court, the Court Study Committee believes no one should be exempted from such courses. Subsequent refresher courses should also be required periodically to insure continued expansion of knowledge and ability.

Recommendation: The Court Study Committee recommends that the Continuing Legal Education Program of the D.C. Bar be expanded to provide curricula relating to the juvenile and neglect practice area. Courses should serve both the attorney inexperienced with Family Division practice, as well as the attorney seeking refresher courses in one or more particular areas.

Recommendation: The Court Study Committee recommends that the Board of Judges of the D.C. Superior Court seriously examine the adoption of competency standards for attorneys

- 151 -

receiving appointments in the Superior Court Family Division. Enrollment in periodic continuing legal education courses could be one criterion for assuring the competency of counsel receiving Court appointments. (The Superior Court might wish to approach the issue more generically so that any attorney who appears on the Court's appointment lists is known to have certain direct knowledge of the subject areas relating to such appointments.)

3. Appointment and Removal

Currently, the system or procedure for appointing attorneys to handle child neglect cases and juvenile cases is contrlled by the judges of the Superior Court. In fact, as noted earlier, the system is operated by the administrative court staff with no guidelines, and no legal training or acumen upon which to make reasonable appointments. Local and national organizations have suggested that the type of appointment procedures followed in the Superior Court Family Division are not adequate to assure effective representation. It is beyond the purview and the capacity of the Court Study Committee to recommend a better system to guarantee quality appointments and ensure prompt removal of those failing in their duty. Nonetheless, we are aware of some important initiatives by the Board of Judges of the D.C. Superior Court and by the D.C. Bar, to address this problem in the criminal defense ~~area~~, notably the Criminal Justice Act (CJA) Committee of the D.C. Superior Court, Judge Leonard Braman, Chair, and the D.C. Bar Committee on appointment of Counsel in Criminal Cases, Herbert E. Forrest, Esq., Chair. These respective

- 152 -

groups have been working cooperatively to develop plans for the reform of the entire system and for the appointment and compensation of counsel in the D.C. Superior Court in both the juvenile and adult criminal areas. The plans call for the establishment of an agency, independent of the Court, governed by a board of trustees, to administer all aspects of the appointed counsel program, including compensation of attorneys, defense investigators, and defense experts. In addition to many other reforms, the plans recommend in the juvenile area establishment of attorney panels whereby attorneys, based on relevant experience and participation in continuing legal education courses, would be deemed qualified to receive appointments to cases. (The reader is directed to the reports of the Braman Committee and the Forrest Committee for further information in this area.)

As indicated above, over a period of time many doubts have been expressed about the quality of defense counsel practicing in the Superior Court Family Division. Both the Braman Committee and the Forrest Committee are making significant strides to develop procedures and systems to improve the quality of criminal defense representation in both adult and juvenile cases. The Court Study Committee, while endorsing and commending these efforts, does note with regret that the proposed reforms do not address the serious appointment and removal issues with regard to attorneys in child neglect cases in the Family Division.

- 153 -

Recommendation: The Court Study Committee endorses the D.C. Bar and D.C. Superior Court CJA Committees' proposals for reform of the criminal defense appointment system, and other related improvements. We also urge these committees to address the serious issue of representation of parents and children in neglect cases.

4. Law Students

There is little question that law students are a boon to the D.C. Superior Court. They save money, and because of the available back-up services and the dedication of the students, representation appears to be of generally high quality. The law student resource however is not being properly utilized. Students, in the view of the Court Study Committee, should be permitted to represent juveniles charged with felonies. While their present representational service in hearings on custody orders and Interstate Compact cases is useful, it should not limit the possibility of broader representational authority to include juvenile felonies. The Committee further notes that the rationale for the exclusion of student representation in adult felony cases is not at all applicable to the juvenile area -- i.e., the possibility of significantly longer prison term in adult felony cases and longer sentences for repeat offenders -- are not applicable in the juvenile felony area. Also in this connection, the Committee notes that the D.C. Court of Appeals Rule regarding student practice does not preclude law student representation in juvenile felony cases. Because the student programs obtain new cases in only part of

- 154 -

the year and because case loads are limited, no substantial inroad would be made into the numbers of cases available to private attorneys if the student rule were expanded.

The suggestion to expand the student practice rule has been repeatedly made to the Judicial Subcommittee on Student Practice. No action has ever been taken. Indeed, this Judicial Subcommittee currently has two vacancies, one caused by retirement and one caused by an appointment to the Court of Appeals, making this important Court body totally ineffectual at present.

While cases such as murder and rape may be too complicated for students, some felonies differ from misdemeanors only by reason of the value of the property involved. Other felonies such as unauthorized use of a motor vehicle, Burglary II, and receiving stolen property may also be appropriate cases for students. Since students have demonstrated their ability to represent juveniles competently, the Court Study Committee finds little justification for retaining the current misdemeanor/felony distinction.

Recommendation: The Court Study Committee recommends that the existing Superior Court student practice rule be amended to permit law students to represent children charged with limited classes of felonies.

5. Fees

The majority of youth passing through the Superior Court Family Division for delinquency, person in need of supervision (PINS) offenses or as an alleged victim of child

- 155 -

neglect come from financially indigent families. Thus, in terms of PINS and delinquency cases, the cost of legal representation is borne by the general taxpayer through the D.C. Criminal Justice Act. Because the attorney fee schedules under the Criminal Justice Act (CJA) are so low, "uptown" attorneys are unlikely to be attracted to the juvenile system. Even an attorney truly interested in the juvenile justice system would find it difficult to give up potentially lucrative hours to come to the Superior Court Family Division for such meager compensation. Fees are currently set at \$30 per courtroom hour and \$20 per non-courtroom hour. These rates have not changed since 1974. Assuming lawyers have to pay rent, secretarial salaries, and other overhead items, good lawyers cannot remain in the juvenile system at such minimal compensation. Indeed, interviews conducted by the Court Study Committee suggest that some lawyers find themselves financially unable to maintain regular offices, secretaries, or files. If CJA fees remain at their present level, the type of attorney attracted to the juvenile system is likely to decline as inflation continues.

The low fees not only fail to attract many attorneys, but also fail to provide those attorneys who do participate incentive to give thorough representation. Because of the nature of juvenile proceedings, much of an attorney's time is spent planning and performing social work functions in addition to regular legal work. If performed correctly, these

- 156 -

activities are inordinately time consuming. This planning and investigation which is vital to the effective representation of a child, is considered out-of-court time and therefore qualifies for payment at \$20 per hour. Consequently, attorney's preparation time is likely to be kept at a minimum. In addition, the Superior Court Family Division "requirement" that all attorneys receiving juvenile cases under the CJA program accept neglect cases on a pro bono basis is, at best, a disincentive to attorneys' participating in the program. It is difficult enough to encourage good attorneys to participate without tacking on the requirement that they also spend long, emotionally draining hours on child neglect cases without any compensation.

Recommendation: The Court Study Committee recommends that the current CJA payment schedule for juvenile cases be revised upward to reflect current market fees obtainable from private litigants for similar work.

There are several other factors related to fees that discourage many attorneys from participating in the program. First, as with most parts of the D.C. Court system, the wheels of the juvenile system grind very slowly. Much of an attorney's day is spent waiting for cases, waiting for judges, waiting for parents, waiting for marshals, etc. Waiting time is not compensable unless the case is actually waiting to be heard. Consequently, the time spent at the D.C. Courthouse between the morning calendar call and actual assignment to a judge for the hearing is not compensated even though this wait may

- 157 -

frequently involve several hours. Further, since attorneys are not usually permitted to leave the courthouse during these periods, no other tasks can be performed. Since no private rooms are available to lawyers and since non-pay phones are difficult to find, little work can be performed. In the past, the Court's library was available though it is no longer open to the private bar. (The Court library remains open for government attorneys.)

Ready access to telephones are essential for the proper conduct of appointed cases as well as for the attorneys' convenience during waiting time. Most new referral cases require communication with family and school officials, as well as probation staff not located in the main courthouse. Since these are essential functions in representing children, free local phone service should be available to counsel.

Recommendation: The Court Study Committee recommends that an area of the courthouse, more suitable than the lawyers lounge, be set aside so that attorneys who are waiting for juvenile and neglect cases to be called can spend their time more productively. The area should contain several non-pay telephones to be used by attorneys for local calls. The Court library should also be open to the private bar just as it is to the U.S. Attorney's staff.

6. Vouchers

The method by which appointed CJA counsel receive payment in juvenile (and adult) cases in the Superior Court is through submission of a detailed expense voucher. These documents call for minute by minute accounting of an attorney's

- 158 -

time and are highly detailed in other respects. The completed voucher is filed with the Court where it must be approved by a judge prior to payment. An additional procedure entails a pre-audit review by the Fiscal Office of the D.C. Courts.

CJA vouchers are routinely reduced before payment to the attorney, and rarely is counsel informed of the reasons. Additionally, while improvements have been made in the past year, delays in payment have been lengthy.

The Braman Committee and the Forrest Committee, both referenced above, address the voucher problem in their reform plans by removing the Court's involvement totally from this area. While the implementation of this reform will have important salutary benefits, the Court Study Committee would also urge that the voucher form itself be simplified to lessen the administrative burden on the attorney while retaining the oversight necessary for effective administration of the CJA program. The Court Study Committee took particular note of the simpler CJA voucher forms and procedures employed by the U.S. District Court for the District of Columbia.

Recommendation: The Court Study Committee supports the reforms proposed by the CJA Committee of the D.C. Superior Court to remove the Court from any direct involvement in the approval and processing of CJA payment vouchers for attorneys in Juvenile and FINS cases and recommends immediate development and use of a simpler voucher form and procedure.

7. Investigations

The Public Defender Service (PDS) investigation staff is available to private attorneys appointed under the

- 159 -

Criminal Justice Act. In addition, the Criminal Justice Act provides compensation for investigative services. PDS employs six professional investigators to meet the needs of its own staff of attorneys as well as that of the private bar in both adult and juvenile cases. Approximately 30 student investigations are also assigned to PDS attorneys. The number of investigators is insufficient to meet the demand for their time. However, the number of requests for such services from non-Public Defender Service Attorneys are few, and they seem to come from only a limited number of attorneys. Use of private investigators is deterred by the inequities currently inherent in the CJA voucher system. Because lawyers would have to use their own funds to pay investigations and then wait for reimbursement, private investigators are infrequently used by attorneys appointed to handle juvenile cases.

All area law schools have some sort of legal aid program or society for 1st and 2nd year students in addition to their clinical programs. Most of these programs would welcome a systematic method for involving their students in meaningful work. An investigator program funded by the C.J.A. office could assist the learning ambitions of students while enhancing the quality of representation.

Recommendation: The Court Study Committee recommends that the C.J.A. System contract with area law schools or legal aid organization society to provide students to perform investigations in adult and juvenile cases.

- 160 -

Recommendation: The Court Study Committee further supports the thrust of the Braman Committee recommendation to provide that attorneys compensated under the C.J.A. program may procure investigative services within certain guidelines without prior Court approval.

Recommendation: The Court Study Committee further recommends that the current C.J.A. payment schedule for investigators be revised to reflect current market fees obtainable from private litigants for similar work. (It is the Committee's experience that a qualified investigator costs in the range of \$10 per hour.)

8. Social Services

The absence of adequate social services, like the absence of investigative services, deters adequate representation. (See the separate section of the Juvenile Report concerning rehabilitation.) It is readily apparent to those familiar with the Superior Court Family Division that juveniles and neglected children, as well as their parents, cannot be adequately represented without the assistance of competent social work staff. It is the opinion of many lawyers interviewed by the Committee that the Court's own Social Services Division staff does not adequately fulfill this function. Actual client work is limited. It is often difficult for a lawyer to contact the probation officer. Some lawyers consider the social reports of the Social Services Division devoid of real content. Lawyers complain that they do not receive social reports unless they go looking for them. Further, Court Social Services, for overall Court policy

- 161 -

reasons, does not get involved in a juvenile delinquency or P.I.N.S. case until a finding of guilt is made. Consequently, lawyers have difficulty developing programs to divert children from the D.C. juvenile justice system prior to a finding of guilt, or involvement.

The Offender Rehabilitation Division (ORD) of the Public Defender Service does provide social services to the private bar as well as to the P.D.S. staff. However, only one social worker is assigned to juvenile cases and one employment specialist handles all juvenile cases. If more requests were forthcoming, ORD could not handle the load. Like Public Defender Service investigative services, however, ORD is seldom used by private attorneys in the Superior Court Family Division. Unless these services are provided by contract with CJA funding, the services will not be forthcoming, and again representation will not be adequate.

Currently most defense attorneys in juvenile cases do little more than read probation officer's reports. Some lawyers attempt to locate community programs on their own. This demanding task, however, cannot be performed without funds. Again, the voucher system deters attorneys from taking these additional steps which may be to the direct benefit of the client.

A number of universities in the D.C. metropolitan area have graduate schools of social work. Each includes some form of internship to provide actual case work as part of the

- 162 -

degree program. The Public Defender Service O.R.D. currently uses these students to assist their program. The C.J.A. system should expand this program by contract to enhance client representation in the Family Division.

Recommendation: The Court Study Committee recommends that the C.J.A. System contract with area social work graduate schools to provide social work services in selected juvenile cases. Included should be independent evaluations of the services the child requires.

9. Neglect Cases

Child neglect cases pose the greatest source of frustration to Superior Court Family Division practitioners. A form of de facto blackmail exists. If attorneys expect to be appointed to CJA fee-generating delinquency and PINS cases, they must also provide representation in non-CJA fee-generating neglect cases. On some days, a lawyer may find him or herself appointed to only neglect cases. Since it is conceivable that an attorney will be in the attorney pool only one or two days every two months, many attorneys find themselves inadvertently in a pro bono business.

Under the present pro bono system of representation of parents in neglect cases, adequate effective representation is unlikely at best. The cases are assigned to whomever happens to be around, and, if the cases are accepted at all, they are taken begrudgingly. The Court Study Committee is aware of more than one instance where an attorney adamantly refused a neglect case only to have an order appointing that

- 163 -

attorney delivered to a judge, signed, and forwarded to the attorney. In this situation, the reluctance to provide full representation is heightened to its peak. The representation has been characterized by one practitioner as "routine malpractice."

Neglect cases are the most difficult of Family Division cases. The nature of the problems, the conditions of the clients, the inefficiency and insensitivity of many Department of Human Services workers, and the complexity of the legal issues should require expending vast amounts of time by the attorneys. Since the work is uncompensated and time-consuming, it is not being performed.

Neglect cases never die. Since commitments can extend to the child's 21st birthday and since the Department of Human Services and the Office of the Corporation Counsel have been particularly ineffective in either reuniting families, or terminating parental rights, cases go through interminable reviews.¹⁸⁷

¹⁸⁷ Because judges rely almost exclusively on DHS reports, and because of their reluctance to order the District Government to do anything other than maintain custody, reviews in neglect proceedings tend to be a waste of time. This was not the purpose of the review process. It was designed to measure both the progress of the client, as well as the agencies charged with providing supervision. This is not the case currently however, and hearings are pro forma. Lawyers' arguments are seldom seriously considered. Court reports are seldom rejected. (See recommendations in the Neglect Section of this Report.)

- 164 -

The appointed counsel who has been forced to take a neglect case just so he/she can be afforded the "privilege" of picking up a paying case at twenty and thirty dollars an hour is not a likely candidate for effectively representing his client in a neglect case. This is not a wristslapping proceeding for the parent. He or she stands to lose a child and faces the possibility of future criminal charges.

Abuse and neglect cases are often distasteful, emotionally draining, and time consuming. Participants tend to look down upon the clients. The Court's reluctance to use the review procedure meaningfully compounds the problem. Consequently, some attorneys now have over 100 neglect cases in the "active" files for which they receive no compensation and for which they perform minimal work. Many lawyers have indicated that the nature of this system makes them fair game for malpractice suits. Since there appears to be no way to withdraw from these cases, lawyers feel trapped. These appointments alone have resulted in the gradual withdrawal of good attorneys from the Superior Court Family Division.

Despite the apparent incompetence of many parents, national and local groups have shown that strong, swift intervention can remedy the shortcomings of many parents. Vigorous assistance of counsel is necessary to insure that the legal rights of parents are protected and that the services necessary to reunify their families are provided by the District. In the absence of such representation, the Court and the Bar will

- 165 -

undoubtedly continue as participants in the unwarranted disintegration of many District of Columbia families.

Recommendation: The Court Study Committee recommends that the District of Columbia Council enact legislation providing that attorneys handling child neglect cases be compensated at a rate similar to the scale for delinquency cases under the CJA program.

Recommendation: The Court Study Committee recommends that the appointment process for neglect cases be controlled by the same system proposed by the Superior Court Criminal Justice Act Committee for criminal and delinquency cases.

Recommendation: The Court Study Committee recommends that social service and investigation services be made available to attorneys representing parents and children in neglect cases.

Recommendation: The Court Study Committee recommends that the training programs devised for attorneys accepting appointments in neglect cases include special sections on family dynamics and child development.

C: The Family Divisions Judiciary

Prior to the reorganization of the D.C. Courts in February 1971, three judges served exclusively on the Juvenile Court. The 1970 D.C. Court Reform Act incorporated the functions of Juvenile Court into the Family Division of Superior Court and provided for the rotation of the 44 Superior Court judges through the various divisions of the Court. One stated purpose of this incorporation and rotation was to attract a number of highly qualified and knowledgeable judges to juvenile and family cases.

- 166 -

1. Assignment and Rotation

The 1970 D.C. Court Reform Act provides that the Chief Judge of the D.C. Superior Court is to consider the interests and abilities of the judges when making assignments to the Family (and Tax) Division. The Court Study Committee notes that for most of the past ten years certain judges appear to have avoided assignment to Family Division by claiming lack of interest. Yet ability in family law or juvenile justice related experience do not seem to be assignment factors. The general practice for most of the past ten years in many observers' view has been to utilize the Family Division as the training ground for new judges. Examination of Superior Court judicial assignments in 1977, and Court Study Committee observation shows that certain retired judges, and most women judges, have been assigned in a disproportionate degree to the Family Division.¹⁹⁸ On the other hand, many very able qualified male judges are rarely assigned to this Division.

2. Period of Rotation

The prior Chief Judge's practice was to rotate judicial assignments, including the Family Division, every month without prior notice. However, Committee research revealed that many judges were consecutively reassigned to the

¹⁹⁸ The Committee notes that some of these women judges have been among the most dedicated and able in the Division. The Committee desires to state only that no division or assignment within the Court should be seen as "women's work," or less serious or whatever.

Family Division, thus providing a level of continuity for some judges and some cases. The present Superior Court Chief Judge has initiated uniformly longer assignment periods which in the Family Division now average about three months. Some judges are given a second or third assignment within the Division in the same or different specific assignment. It is the opinion of the Committee that the longer uniform assignments permit more judges an opportunity to become familiar with the Family Division subject matter.

There has been some debate about whether there should be a separate Family Court with judges who serve permanently and are not rotated through the rest of the Superior Court. The Court Study Committee has considered this issue in relation to the juvenile and neglect areas. We are of the opinion that the quality of judges attracted to serve on the Superior Court Bench and in turn rotated through the Family Division under the present system has continued to improve. Attracting a quality judiciary is a recognized and valid reason for the juvenile functions to remain part of the D.C. Superior Court. We do express concern, however, that the long standing judicial assignment practice does not achieve the maximum positive effect possible under the rotation system. While rotation through the Family Division, and the other Divisions of the D.C. Superior Court in turn, can attract more judges to Family Division service, the Family Division should not be perceived, as our extensive interviews found it has

- 168 -

been since court reorganization, as a training ground, a dumping ground, or as a penalty judicial assignment. All qualified judges should be required to lend their energy and expertise to the vital work of the D.C. Superior Court Family Division.

The periods of rotation, moreover, must be carefully thought out in order to assure that some judicial continuity in individual cases is achieved. Even with the present three month assignments, there is little case continuity in individual juvenile or neglect cases. (The Committee's earlier recommendations to shorten the time between arrest and disposition in juvenile cases would have the effect of providing much greater continuity of certain judges with certain juveniles.) Moreover, assignment of judges to perform only specialized functions rather than an individual calendar system further contributes to the lack of continuity. The Burt Study documented that juveniles charged with delinquency generally appeared before several judges in each case. Only twelve percent of the juveniles in the study appeared before a single judge in one case, and over half appeared before three to seven judges per case.¹⁰⁹

¹⁰⁹ The cases in the Burt Study entered the system in 1977 before the longer assignment procedure and there are no current data on judicial continuity; however, we note data on the length of time cases remain in the system -- often in excess of three months -- probably would keep the figures on judge/case continuity low.

- 169 -

Several judges interviewed by the Court Study Committee noted the irony of the judicial rotation policy, in that an alleged juvenile delinquent who comes before the Court for several offenses over even a short period of time, will be seen by upwards of 15 or more different judges, each with differing philosophies and attitudes toward handling the juvenile.

The Ellison Committee, which intensively studied D.C. Juvenile Court operations in the late 1960's., recommended in 1970 that a modified individual calendar system be adopted for juvenile cases.

The Ellison Committee Report summarized their thinking in this area as follows:

Under this system, one judge would be assigned for long term rotation to handle all preliminary matters that involve disclosure of significant social information and to function as an assignment judge. In order that a judge not sit on the trial of a case in which he has been given social information on the child, in all cases where a denial of allegations is entered a trial date should be set and the matter assigned to one of the other judges to conduct all further matters on an individual calendar basis.¹¹⁸

Recommendation: The Court Study Committee recommends that the Superior Court Family Division be treated on a par with the other Divisions of the Court with respect to the assignment of judges and that no judges be exempted from sitting in the Family Division.

¹¹⁸ Op. Cit Ellison Committee Report.

- 170 -

Recommendation: The Court Study Committee recommends that the Superior Court Family Division initiate a modified individual calendar system in juvenile delinquency and neglect cases on a pilot basis.

3. Training

There is no legislation, rule, or established Court policy to provide training or orientation to new judges in the Superior Court, nor to judges rotating into a Division after a period of years in other Divisional assignments. A few years ago, Superior Court Judge Tim Murphy instituted an orientation program for newly appointed judges. The orientation varies from two to three weeks and covers a plethora of procedural and substantive, aspects of the D.C. Court system. By all accounts, this orientation program is highly useful and serves a valuable purpose. However, no staff or resources are allocated for the orientation and training, and there is no mechanism for institutionalizing or preserving repetitive aspects of the training. Each new group of judges is trained or oriented ad hoc and some judges in the past two years have taken the bench with virtually no orientation at all. Because the precise assignment path judges will follow through the Superior Court is unknown the orientation training is designed to give new judges a general overview of the D.C. Court system and to familiarize them with basic procedures of the Court.

Specific training in matters relating to the Family Division within the general orientation consists of a one

- 171 -

day's tour of the Department of Human Services juvenile rehabilitation institutions at the Laurel, Maryland Children's Center, and several hours discussion with the Family Division Clerk and staff, and with the Corporation Counsel. Further specific training is left to the Administrative Judge of the Family Division and has varied according to the style and practice of the person in that position. The first Administrative Judge held regular meetings of the judges in the Family Division and attempted to provide them with information on resources, case law, and other relevant matters. The present Administrative Judge unfortunately has not continued this practice.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require that judges of the D.C. Courts receive comprehensive pre-service training before assuming normal judicial duties.

Recommendation: The Court Study Committee recommends that the Superior Court adopt rules providing that judges upon appointment to the Court must participate in a substantial judicial orientation program before performing official duties.

Recommendation: The Court Study Committee recommends that the Superior Court Rules provide that each Division offer specific training to judges newly assigned to the Division and periodically throughout the judge's assignment to that Division.

Recommendation: The Court Study Committee recommends that staff and resources be allocated to the orientation and training function of the Superior Court.

Videotaped materials should be developed and equipment purchased to permit their utilization for new judges and judges newly rotated into a Division. (The reader is encouraged to refer

- 172 -

to the recommendations concerning training in the neglect section of this overall Juvenile and Neglect Report.)

4. Benchbook

The statutory provisions which relate to juvenile and neglect cases in the D.C. Superior Court are largely contained in Title 16, Chapter 23 of the D.C. Code. A few additional sections exist in Titles 3 and 6 of the D.C. Code. It is the experience of Committee members and of persons interviewed, that many judges hearing neglect and juvenile cases are not conversant with the statutory requirements nor with the underlying philosophy of enforcement of the various provisions.

Many judges are unfamiliar with the facilities to which they order children, and the facilities or resources which provide psychiatric and psychological evaluations upon which orders are based. Many judges are totally unfamiliar with the realities and the dynamics of the juvenile cases they are called upon to decide.

The Committee believes that the D.C. Superior Court's independence from the Executive Branch of the D.C. Government does not necessitate nor justify complete isolation and ignorance of the Executive Branch's operations. The Committee believes it is the obligation of the Superior Court and of each judge to become familiar with the legislative provisions

- 173 -

and the resources and potentials for effectuating the purposes of Court intervention in the lives of juveniles and families.¹¹¹

Recommendation: The Court Study Committee recommends that all judges entering the Superior Court Court Family Division be provided with a reference book containing the relevant D.C. Code sections, with Court Rules which reflect current statutory requirements, with a Bench Book that can be utilized as a reference, and with ongoing information concerning resources available within the D.C. community.

The Committee also urges the Court Executive to assure that every judge of the D.C. Superior Court and D.C. Court of Appeals routinely receives copies of legislative enactments of the D.C. Council.

5. Social Files

The Court Study Committee notes that some judges do not read the information in the social files before making a determination on the disposition to be made of juveniles and neglected children. While this cannot be excused, our Committee is aware that social files are often cluttered with multiple copies of documents and lack any order, requiring judges to wade through excessive and confusing information.

Recommendation: The Court Study Committee recommends that the Family Division Clerk's Office establish a format and procedure for social files, and that it routinely check the files to assure compliance with this

¹¹¹ The 1977 Prevention of Child Abuse and Neglect Act made substantial changes in legislation governing responsibilities of various city agencies including the Court in neglect cases, yet the Superior Court Rules have not been amended to reflect these changes since the Act's passage more than three years ago.

- 174 -

format. It would appear prudent to consult closely with judges, Social Services Division personnel, and others in developing a "Social file" format.

6. Administrative Judge

The Court Study Committee commends Superior Court Chief Judge H. Carl Moultrie, I for introducing the concept of Administrative Judge for each major Division of the Court. We believe that the position is an important one which can contribute greatly to improve communication and further enhance of the quality of the Court's work. The Committee notes that the Administrative Judge of the Family Division has very ably assumed certain scheduling functions thereby smoothing out irregularities caused by lack of this function previously.

Further refinement of the Administrative Judge concept is warranted and should include the clear assignment of certain responsibilities to each Administrative Judge. In the Family Division the Committee believes the Administrative Judge is in an ideal position to perform the following functions:

1. Determining critical information and data needs of the Family Division as a whole, and of each assignment within the Division, and assurance that such data and information are available to individual judges and staff.

2. Identification and dissemination of information on legislation, current opinions, and other matters relating to the functions of the Family Division.

- 175 -

3. Providing a focal point for the identification of problem areas and needs in the performance of the functions of the Family Division, including the services provided by the Superior Court Social Service Division, the Department of Human Services, St. Elizabeth's Hospital, District of Columbia Schools and other external agencies.

4. Coordinating the training for judges assigned to the Family Division.

5. Maintaining and updating information on resources available to the judges in the Family Division for performance of their responsibilities.

The Committee recognizes that these responsibilities would consume a certain amount of time and would require that the Administrative Judge not carry a full case load. However, the increased effectiveness with which the Division would function over time by having these duties performed by a central judicial resource would greatly outweigh the cost in terms of a somewhat smaller caseload for these vitally important positions in the Superior Court.

Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court assign to the Administrative Judge of the Family Division the responsibilities of identifying and assuring the collection and dissemination of data, information and materials necessary for performance of Family Division functions, coordination of training for Family Division judges, and coordinating the identification and resolution of problems with agencies external to the Court on Family Division matters. The Office of the Court Executive and/or the Clerk of the Superior Court should be responsible for administrative support in connection with this recommendation.

Appendix A

PERSONS INTERVIEWED

1. Geoff Alprin, Chief
Law Enforcement Section
Office of the Corporation Counsel
personal interview, December 14, 1979, December 21, 1979,
January 11, 1980, and May 21, 1980
2. Judge Sylvia Bacon
D.C. Superior Court
personal interview, October 9, 1979
group meeting, July 31, 1978
3. William Barr, Director
Youth Services Administration
Department of Human Resources
personal interview, September 12, 1979
4. Jack Bischoff, Chief Clerk
Superior Court Family Division
personal interviews, September 12, 1978, May 31, 1979,
June 1, 1979 and January 16, 1980
telephone interview, February 23, 1979
5. Judge Samuel B. Block
D.C. Superior Court
personal interview, November 7, 1979
6. Raymond Bobo
Social Services Division
personal interview, January 10, 1980
7. Jim Brown, Director
Community Research Forum
University of Illinois
personal interview, October 18, 1978
8. Rose Bruzzo
Social Services Division
personal interview, January 9, 1980
9. Timothy Carroll
Social Services Division
personal interview, January 8, 1980
10. Phil Collins
Social Services Division
personal interview, January 18, 1980

Appendix A

11. Michael J. Dowd, Esq.
personal interview, May 21, 1980
group meeting, July 31, 1978
12. Patricia Dunmore
Social Services Division
personal interview, January 10, 1980
13. Dan Feeney
Superior Court, Social Services Division
personal interview, January 8, 1980
14. Diane Felton
Social Services Division
personal interview, January 9, 1980
15. Tony Fitch, Esq.
Public Defender Service
group meeting, July 31, 1978
16. Kathy Fitzgerald
Social Services Division
personal interview, January 9, 1980
17. Thomas Flannery
Social Services Division
personal interview, January 8, 1980
18. James Frank
Social Services Division
personal interview, January 9, 1980
19. Joseph Galvagna
Superior Court, Social Services Division
personal interview, January 8, 1980
20. Kathy Gilson
A. D. Little, Inc.
personal interview, January 4, 1979 and September 5, 1978
21. Judge George Goodrich
D.C. Superior Court
personal interviews, May 1, 1979, October 15, 1979 and
January 24, 1980
22. Judge Joyce Gresh
D.C. Superior Court
personal interviews, May 25, 1979 and January 15, 1980
group meeting, July 31, 1978

Appendix A

23. Gay Gunn
Social Services Division
personal interview, January 9, 1980
24. JoAnn Hare
Social Services Division
personal interview, January 10, 1980
25. Patrick Hickey, Esq.
Public Defender Service
group meeting, July 31, 1978
26. Robert Hilson, Assistant Director
D.C. Superior Court, Social Services Division
personal interview, November 20, 1979 and February 1, 1979
group meeting, July 31, 1978
27. Mary Holeman, Director
Child Abuse Services
Children's Hospital
personal interview, October 16, 1979
28. Nan Huhn, Esq.
Office of the Corporation Counsel
personal interviews, October 16, 1979, December 14, 1979,
December 21, 1979, and May 21, 1980
group meeting, July 31, 1978
29. Michelle Hunt
D.C. Superior Court, Social Services Division
personal interview, January 8, 1980
30. Tim Junkin, Esq.
Public Defender Service
group meeting, July 31, 1978
31. Honorable Orman Ketcham
National Center for State Courts
Williamsburg, Va.
personal interview, April 26, 1979
32. James Klein, Esq.
Public Defender Service
personal interview, October 9, 1979
33. Robert Kramer, Esq.
personal interview, October 20, 1979
34. Ann Lowe
Social Services Division
personal interview, January 8, 1980

Appendix A

35. James McComas, Esq.
Public Defender Service
personal interviews, October 9, 1979 and February 5, 1980
36. Jessie McDaniel
Social Services Division
personal interview, January 10, 1980
37. Judge Bruce Mencher
D.C. Superior Court
personal interview, October 17, 1979
38. Roger Moore, Esq.
personal interview, October 5, 1979
39. Sgt. Jerome Morris
Metropolitan Police Department
Juvenile Major Violators Project
personal interview, September, 1978
40. Mary O'Farrow
Social Services Division
personal interview, January 10, 1980
41. Thomas Ogletree, Esq.
Public Defender Service
personal interview, October 12, 1979
42. Jim Ortego, Consultant
Whittier Court Delay Team
personal interview, May 24, 1979
43. Lee Partridge, Staff Director
Committee on Human Resources and Aging
D.C. City Council
personal interviews, September 14, 1978 and December 15, 1978
44. Betsy Reveal, Director
OCJP&A
personal interview, July 26, 1979
45. Richard Rice
Social Services Division
personal interview, January 9, 1980
46. Steve Rickman, Evaluator
D.C. State Planning Agency
personal interview, June 27, 1979

Appendix A

47. Ed Ricks
Family Division Clerk's Office
D.C. Superior Court
personal interview, August 7, 1978
8. Louis P. Robbins, Esq.
Corporation Counsel
group meeting, July 31, 1978
9. Alan Schuman, Director
D.C. Superior Court, Social Services Division
personal interviews, October 3, 1979, December 6, 1979
and February 1, 1979
50. Richard Spiedel, Esq.
personal interview, October 16, 1979
51. Martin Tapscott, Deputy Chief
Metropolitan Police Department
group meeting, July 31, 1978
52. Judge Harriett Taylor
D.C. Superior Court
personal interview, January 16, 1980
53. Diana Voisin, Systems Analyst
D.C. Superior Court, Family Division
personal interviews, April 16, 1979 and January 16, 1980
4. Jody A. Weisbrod, Project Director
Family Court Disposition Study
Vera Institute of Justice
New York
telephone interview, January 8, 1980
55. Nancy Wynstra, Director
Planning Division
D.C. Superior Court
personal interview, June 12, 1978
56. Alex Yarborough
Social Services Division
personal interview, January 10, 1980
57. Arthur J. Whalen, Jr., Esq.
personal interview, February 7, 1980

Appendix B

BIBLIOGRAPHY

- Ad Hoc Committee on History and Jurisdiction of the District of Columbia Court System. Interim Report to the Committee on the Administration of Justice. Jan. 1969. (Unpublished Report to Ellison Committee).
- American Bar Association, Executive Summary of Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the ABA. (Criminal Section of the ABA., Washington, D.C. 20036) 1975.
- Beyer, Marty, Phd. Unpublished Study of District of Columbia Juvenile Detention, July - September, 1975., January 1976.
- Burt, Marvin R., A Descriptive Assessment of the Processing of Juvenile Cases in the District of Columbia Superior Court. Washington, D.C., October, 1979.
- Committee on the Administration of Justice to the Judicial Council of the District of Columbia. Court Management Study, Part 1 - Summary, Washington, D.C., May 1970.
- Committee on the Administration of Justice to the Judicial Council of the District of Columbia, Court Management Study, Part 2, Washington, D.C., May, 1970
- Council of the District of Columbia, "Prevention of Child Abuse and Neglect Act of 1977", (D.C. Law 2-22). 1977.
- D.C. Court System. 1976, 1977, 1978 & 1979 Annual Reports District of Columbia Courts, Washington, D.C. 20001.
- D.C. Superior Court, Annual Juvenile Statistical Report. Superior Court of the District of Columbia, Washington, D.C., 1977.
- D.C. Superior Court, Monthly Statistical Reports Family Division, 1977, 1978, 1979. Washington, D.C.
- D.C. Superior Court. Court Rules. Rules Service Company. Washington, D.C., 1980.
- Fanshel, David and Shinn, Eugene B. Children in Foster Care-- A Longitudinal Investigation. Columbia University Press, 1978.

Appendix B

Ferren, Honorable John M., Chairman. Report of the Committee on Civil Legal Services of the Judicial Conference of the District of Columbia with Appendices. Washington, D.C., May 15, 1980.

In Re Gault, 387, U.S. 1, 87 Supreme Court, 1428 (1967).

Gurny, Ellen S., District of Columbia: Court Organization Profile, National Center for State Courts, Williamsburg, Va. 1977.

IJA-ABA Joint Commission on Juvenile Justice Standards, Standards for Juvenile Justice: A Summary and Analysis, Ballinger Publishing Company, Cambridge, Mass. 1977.

IJA-ABA Joint Commission on Juvenile Justice Standards, Standards Relating to Interim Status. Ballinger Publishing Company, Cambridge, Mass., 1977.

IJA-ABA Joint Commission on Juvenile Justice Standards, Standards Relating to Juvenile Delinquency and Sanctions Ballinger Publishing Company, Cambridge, Mass., 1977.

Johnson, Alice E. and Patrick M. O'Hara, Cost Analysis Study, 3rd District Juvenile Court Unit, Portsmouth, Virginia, January, 1979. Unpublished report.

Joint Committee on Judicial Administration, D.C. Courts. Information Policy of the District of Columbia Court System, Washington, D.C., July 30, 1974.

Office of Juvenile Justice and Delinquency Prevention. Juvenile Detention in the District of Columbia. Preliminary Report to the D.C. Council Committee on Human Resources and the D.C. Bar Committee to Evaluate the Reorganization of the D.C. Courts. Washington, D.C., 1979.

Ketcham, Orman W., "Why Jurisdiction Over Status Offenders Should Be Eliminated from Juvenile Courts". Boston University Law Review, Volume 57, No. 4, July, 1977.

Meehan, Susan B., Answers: A Problem Solver's Guide to Community Resources in D.C., Hill of Swans Press, Washington, D.C., 1978.

National Council of Juvenile Court Judges, Department of Systems and Technology. Juvenile Justice Information Systems: A National Assessment, (Reno, Nevada, 1976)

Appendix B

- National Institute for Juvenile Justice and Delinquency Prevention. Office of Juvenile Justice and Delinquency Prevention. Law Enforcement Assistance Administration. U.S. Department of Justice. A Comparative Analysis of Standards and State Practices. Jurisdiction -- Status Offenses, Volume V, Department of Justice, Washington, D.C., 1977.
- National Institute for Juvenile Justice and Delinquency Prevention Office of Juvenile Justice and Delinquency Prevention Law Enforcement Assistance Administration, U.S. Department of Justice. National Evaluation Design for the Deinstitutionalization of Status Offender Program. The Deinstitutionalization of Status Offender Evaluation Project Staff. Social Science Research Institute, University of California, 1977.
- The National Legal Resource Center for Child Advocacy and Protection, the American Bar Association. Legal Response: Child Advocacy and Protection, April, May 1979. ABA, Washington, D.C.
- Office of the Michigan State Court Administrator. Guide to the Study of Internal Management Practices in the Juvenile Court. Ann Arbor, Michigan. 1978.
- Sarri, Rosemary and Hasenfeld, Yeheskel, editors. Brought To Justice? Juveniles, the Courts and the Law. National Assessment of Juvenile Corrections, Ann Arbor, Michigan, 1976.
- In Re Savoy, D.C. Superior Court. 70-4808. October 13, 1970 January 12, 1973, February 27, 1974.
- Task Force on the Reorganization of the Department of Human Resources. A Report to the Council of the District of Columbia on the Operation of the Department of Human Resources. D.C. City Council. January, 1978.
- U.S. Department of Justice, Children in Custody: Advance Report, 1977.
- Wald, Patricia, "Pretrial Detention for Juveniles" in Pursuing Justice for the Child. p. 119, Rosenheim, ed. 1976.
- Whittier College School of Law. Descriptive Report of the District of Columbia Superior Court Caseflows, Working Papers. Washington, D.C., October 1979.

Appendix C

Dangerous Juvenile Subgroups Compared
to Total Juvenile Subgroups¹

Number of New Cases by Type of Charge

September 79	Year to Date	Totals
Acts v. Persons		1214 ²
"Dangerous" Subgroup:		
aggravated assault	295	
homicide	5	
armed robbery	68	
robbery, force & violence	405	
attempted robbery	47	
	Subtotal	848
Acts v. Property.		2211 ³
"Dangerous" Subgroup:		
arson	20	
burglary I	71	
attempted burglary	13	
grand larceny	171	
	Subtotal	275
Acts Against Public Order		586 ⁴
"Dangerous" Subgroup:		
sale/possession of narcotics	20	
other sex offenses	52	
possessing weapons	52	
	Subtotal	124
Miscellaneous	255	
TOTAL.		4266
		1247 (29% of Total)

¹ Excerpts from Table 3, Juvenile Branch of the Superior Court Family Division Monthly Reports, 1979.

² Of the 1214 in this category, 848 fit the dangerous definition.

³ Of the 2211 in this category, 275 fit the dangerous definition.

⁴ Of the 586 in this category, 124 fit the dangerous definition.

Appendix C - Continued

Note: Robbery, force and violence includes school yard arm twisting for a dollar. Grand larceny can include shiplifting if values are greater than \$100. Therefore, not all of these cases should be considered dangerous or violent, and the figure of 29% is high. A 1970 memorandum to Court staff from Chief Judge Greene (incorporated in Juvenile Rule 106) enumerated as charges for which juveniles must be held pending a decision by a Judge a more limited list of homicide, forcible rape, armed robbery, assault with a gun, sale of narcotice or attempt to commit any of these.

Appendix D

D.C. Superior Court Family Division
Juvenile Rule 106

(1) In determining whether detention is necessary to protect the person of others, the following factors shall be deemed relevant:

- (i) Record of child's previous offenses against persons,
- (ii) Record of child's previous weapons offenses,
- (iii) Nature and circumstances of the pending charge,
- (iv) Nature and circumstances of other pending charges, if they involve an offense against the person or a weapons offense,
- (v) Allegations of danger or threats to witnesses, and
- (vi) Emotional character and mental condition of the child.

(2) In determining whether detention is necessary protect the property of others from serious loss or damage, the following factors are deemed relevant:

- (i) Record of child's previous offenses against the property of others, if serious loss or damage was involved,
- (ii) Nature and circumstances of the pending charge, and
- (iii) Nature and circumstances of other pending charges, if they involve serious loss or damage to the property of others.

Appendix D

(3) In determining whether detention is necessary to protect the child's own person, the following factors are deemed relevant:

- (i) Narcotics addition by child or other severe and chronic drug abuse,
- (ii) Severe and chronic alcoholism of the child,
- (iii) Suicidal actions or tendencies of the child, and
- (iv) Other seriously self-destructive behavior creating an imminent danger to the child's life or health.

(4) In determining whether detention is necessary to secure the child's presence at the next court hearing, the following factors are deemed relevant:

- (i) Child's residence in the District of Columbia,
- (ii) Length of child's residence and present community ties,
- (iii) Employment record of the child,
- (iv) Record of child's appearances at prior court hearings and circumstances surrounding non-appearances, if any,
- (v) Record of child's previous abscondances from institutions or official custody, and circumstances surrounding such abscondances,
- (vi) Record of child's abscondances from home, and circumstances surrounding such abscondances and the child's eventual return home, and
- (vii) Seriousness of the pending charge and its likelihood of including non-appearance.

Appendix D

D.C. Code Section 16-2310

- (a) A child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required --
- (1) to protect the person or property of other or of the child, or
 - (2) to secure the child's presence at the next court hearing.
- (b) A child shall to be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required --
- (1) to protect the person of the child, or
 - (2) because the child has no parent, guardian or custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself, and that
 - (3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

The criteria for detention and shelter care provided in this section as implemented by rules of the Superior Court, shall govern the decisions of all persons responsible for determine whether detention or shelter care is warranted prior to the factfinding hearing.

COMMITTEE REPORT

STATUTORY COURTS REPORT
OF THE D.C. COURT SYSTEM
STUDY COMMITTEE
THE DISTRICT OF COLUMBIA BAR

Charles A. Horsky
Committee Chairman

Samuel F. Harahan
Staff Director

July 29, 1981

(507)

Table of Contents

Statutory Courts Report

	<u>Page No.</u>
Introduction.....	1
Section I Landlord-Tenant Court.....	2
Introduction.....	2
A. Housing Court and Administrative Agency Alternatives.....	6
B. Historical Development of Landlord- Tenant Dispute Resolution.....	9
C. Present Landlord-Tenant Court Procedures.....	14
1. Court Jurisdiction.....	14
2. Service of Notice on Tenants.....	16
3. Caseload Problems.....	18
4. Daily Court Calendar.....	27
5. Pre-Hearing Case Review	30
6. Litigant Understanding of Landlord-Tenant Court Procedures and Practices.....	36
7. The Need for Fair and Equitable Landlord-Tenant Court Proceedings.....	42
8. Interview and Judgment Clerk.....	46
9. Representational Issues.....	51
10. Non-Payment of Rent.....	58
11. Evictions.....	60

Page No.

D. Ancillary Services to the Landlord-Tenant Court.....	63
1. Conciliation and Mediation.....	63
2. The Landlord-Tenant Consultant Service.....	66
3. Housing Inspectors.....	68
Section II Small Claims Court	72
Introduction	72
A. Small Claims Goals and Objectives	73
B. History and Summary Description of Small Claims Court in the District of Columbia ...	74
1. Pre-Trial Phase	76
2. Trial Phase	77
3. Post-Trial Phase	82
C. Small Claims Procedural and Policy Findings and Recommendations	84
1. The Objective of Accessibility	84
A. Awareness	84
B. Small Claims Court Hours	87
C. Small Claims Jurisdictional Ceiling	89
D. Physical Facilities	91
2. The Objective of Speed	92
3. The Objectives of Low Cost and Simplicity	97
4. The Objective of Fairness	100
5. The Objective of Effectiveness	104
6. The Objective of Self-Representation....	109

	<u>Page No.</u>
Section III Traffic Court	112
Introduction	112
A. Jury Triable Traffic Offenses	114
Appendix A -- Minority Report to Section I in Landlord-Tenant Court	120
Appendix B -- Persons Interviewed	125
Appendix C -- Bibliography.....	130

STATUTORY COURTS REPORT RECOMMENDATIONS

- | | | <u>Page</u> |
|----|---|-------------|
| 1. | <u>Recommendation: The Court Study Committee recommends that Title 16, Section 1502 of the District of Columbia Code be amended to require that, in every landlord-tenant action in which service is made by posting (substituted service), a copy of the summons and complaint shall be sent by the landlord to the defendant by regular mail.</u> | 17 |
| 2. | <u>Recommendation: The Court Study Committee recommends that Title 16, Section 1502 of the D.C. Code regarding Service of Summons be amended as follows: The summons provided by Section 16-1501 shall be served ten days before the day fixed for the trial of the action.</u> | 18 |
| 3. | <u>Recommendation: The Court Study Committee recommends that evening and Saturday sessions of landlord-tenant court be scheduled bi-weekly in order to provide plaintiffs and defendants access to the court at times convenient for all parties.</u> | 20 |
| 4. | <u>Recommendation: The Court Study Committee recommends that the Superior Court experiment with variations in the current landlord-tenant court calendaring procedures for a two-year period.</u>
Possibilities include dividing the daily calendar into two parts and scheduling one at 9:00 a.m. and the second in the afternoon; giving daily calendaring priority for litigants with ten or fewer cases on the calendar, or having a separate calendar for certain types of cases. Another possibility is to conduct landlord-tenant court sessions in neighborhood locations rather than in the courthouse. | 20 |
| 5. | <u>Recommendation: The Court Study Committee recommends the appointment of at least one more judge to the Landlord-Tenant Court in the D.C. Superior Court. One judge could be deployed full-time to handle scheduled motions and trials, while the other judge handles the first call and all non-scheduled and emergency matters.</u> | 23 |
| 6. | <u>Recommendation: The Court Study Committee recommends that a landlord-tenant benchbook be developed at the earliest opportunity to define and</u> | 25 |

- standardize court policies, procedures, and dispositions in various categories of cases. This benchmark should also provide a compilation of relevant substantive laws, be updated periodically, and provide procedural court proceedings.
7. Recommendation: The Court Study Committee recommends that the Superior Court add at least two clerks to the Landlord and Tenant Clerk's Office staff so that it can abolish or substantially reduce the current back-log of paperwork. 27
 8. Recommendation: The Court Study Committee recommends that the Superior Court institute a landlord-tenant case screening procedure to facilitate early analysis of cases. The case screening procedure would identify cases where both parties wish to settle or mediate their disputes thus obviating the need for trial, provide referral information to parties who need legal counsel or the assistance of mediation; inform litigants of court procedures, their rights and responsibilities; and of the necessary information and documents the Court will need to consider the case. 35
 9. Recommendation: The Court Study Committee recommends that the Superior Court leadership consider various approaches to facilitating the daily landlord-tenant court calendar and early litigant access to legal or other assistance. Included should be examination of the pilot project outline found on Pgs. 35-36 of the Statutory Court Report. 36
 10. Recommendation: The Court Study Committee recommends that the Superior Court leadership initiate steps to assure that all litigants are clearly informed of landlord-tenant court policies and procedures. An adequately staffed landlord-tenant information office should be maintained to assist all litigants. 42
 11. Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Administrative Judge, in consultation with the landlord-tenant court Clerk, members of the Bar, and others, substantially revise the content of, and the procedure for giving the opening information announcements currently delivered in Landlord-Tenant Court at the start of each day's proceeding. The various announcements should be divided into segments, given and repeated at the beginning and end of the calendar call. 42

Copies of the announcement should be posted outside the courtroom.

12. Recommendation: The Court Study Committee recommends that existing Landlord and Tenant Branch forms and informational materials developed for the use of litigants be reviewed. Where necessary to insure comprehension and understanding, materials should be rewritten, deleting language and terms not readily understandable by the lay public. 42

13. Recommendation: The Court Study Committee recommends that the Superior Court leadership end promptly the current practice of authorizing, during the morning calendar call, the summoning of unrepresented tenants out of the courtroom by lawyers representing landlords for the purposes of settlement negotiations. Should the Court affirmatively determine that it is in the interest of the Court for the parties to be able to pursue either case settlement discussions or lawyer referral and information during the morning calendar call, it is the Court which should inform litigants and not counsel for plaintiffs. 46

14. Recommendation: The Court Study Committee recommends that the Court review the position of Interview and Judgment Clerk, and if it is to be retained, the Court should provide that the position be filled by a quasi-judicial officer who is trained in the law and subject to supervision by a judge. Alternatively, consent judgments should be approved only by the Court. 51

15. Recommendation: The Court Study Committee recommends that the Court adopt procedures to be followed by the Interview and Judgment Clerk which insures that a diligent inquiry is made of every pro se litigant as to that individual's understanding of the nature and consequences of his agreement including defenses which may be asserted and the availability of legal assistance. 51

16. Recommendation: The Court Study Committee recommends that the Superior Court Rules Committee review the Consent Judgment Praecipe form presently being used and revise its language to make its terms more understandable to pro se litigants. 51

17. Recommendation: The Court Study Committee recommends that the Superior Court leadership adopt a firm policy whereby before a judgment can be entered in the landlord-tenant court, or a consent judgment 58

approved, defenses or counterclaim must be ascertained of any unrepresented parties present in court and such persons advised of their rights.

18. Recommendation: The Court Study Committee recommends that the Superior Court insure that either screeners, court personnel, or other persons provide the lawyer referral services now offered by the D.C. Bar's landlord-tenant information and referral office. The Court should also insure that unrepresented litigants who are indigent and in need of counsel are referred in a meaningful and effective manner to legal assistance organizations before judgments are rendered, or consent judgments approved. 58

19. Recommendation: The Court Study Committee recommends that the Superior Court encourage law schools, bar associations, and members of the private bar to contribute legal services on a no-fee basis to indigent litigants in landlord-tenant court proceedings. 58

20. Recommendation: The Court Study Committee recommends that an interjurisdictional group be convened for the purpose of reforming eviction procedures in the District of Columbia. Membership on the group should include the U.S. Marshal's Service, the Rental Accommodations Office, the D.C. Departments of Human Services, and Housing and Community Development, as well as the Superior Court, and others as necessary. The leadership of the proposed interagency group should be from the Executive Branch of the District Government. 62

21. Recommendation: The Court Study Committee recommends that at such time as evictions can be scheduled with certainty the tenant eviction procedure be revised to provide tenants and landlords at least five days advance notice of scheduled evictions. 62

22. Recommendation: The Court Study Committee recommends that consideration be given by judges in Landlord-Tenant Court to routinely involving the Landlord-Tenant Consultant Service in evictions where the tenant is over the age of 65 years, or where the tenants are indigent and have minor children. 63

23. Recommendation: The Court Study Committee recommends that the Superior Court improve its use of non-binding mediation and conciliation services in appropriate landlord-tenant cases where both 66

- parties voluntarily agree to attempt to mediate or conciliate their cases.
24. Recommendation: The Court Study Committee recommends that the Mayor and D.C. Council reaffirm their support and commitment to a strong, viable Landlord-Tenant Consultant Service to operate in conjunction with the Superior Court's landlord-tenant court. 68
 25. Recommendation: The Court Study Committee recommends that the leadership of the Department of Licenses, Investigations and Inspections assign several experienced housing code inspectors to the landlord-tenant court for the purpose of immediately inspecting property where housing code violations are alleged and providing reports and court testimony where needed. 71
 26. Recommendation: The Court Study Committee recommends that the Superior Court leadership foster awareness of and ready access to the small claims court on the part of all types of litigants, one feasible step toward that goal being telephone listings that are more noticeable and easier to find. 86
 27. Recommendation: The Court Study Committee recommends that the Superior Court small claims calendaring procedures be amended to provide plaintiffs and defendants better access to court hearings at times reasonably convenient for the parties, including evenings and Saturday mornings. 89
 28. Recommendation: The Court Study Committee recommends that the Superior Court adopt a return post-card procedure for determining defendants' availability for scheduled trial dates in small claims cases. 89
 29. Recommendation: The Court Study Committee recommends that Section 11-1321 of the D.C. Code be amended to increase the small claims jurisdictional ceiling from \$750 to \$2,500. 91

30. Recommendation: The Court Study Committee recommends that Section 11-1321 of the D.C. Code be amended to grant the authority to the D.C. Superior Court to raise or lower the small claims jurisdictional ceiling as it deems warranted, but no more frequently than every two years. The Committee further recommends that the D.C. Code be amended to allow the D.C. Superior Court to set filing fees and other fees in small claims cases. Modification of the small claims ceiling should be based on an accepted cost of living index such as that published by the U.S. Department of Labor. 91
31. Recommendation: The Court Study Committee recommends that the Superior Court Civil Division leadership abandon the current procedure of setting all small claims matters for Court hearing at 9:00 a.m. each day, and instead, adopt, for a one-year pilot period, different calendaring procedures such as half-day case scheduling to facilitate the efficient consideration of litigants' cases by the Court. In revising the existing calendaring procedures, the Court should consider the possible uses of the post-card reply procedure discussed previously, as well as giving known contested cases calendaring preference over likely default judgment cases.
32. Recommendation: The Court Study Committee recommends that Superior Court Small Claims Rules be amended to allow ten days for the filing of requests to appeal in small claims cases. 97
33. Recommendation: The Court Study Committee recommends that the existing Court Rule requiring corporations to be represented by an attorney in small claims court be modified to give the court discretion to allow small businesses to proceed pro se in the small claims forum. Inasmuch as the Small Claims Branch is designed to provide a low cost forum for resolving small money disputes, it is not appropriate to require small businesses in every instance to incur a level of expense to use this Court which individual plaintiffs and defendants do not bear. 98

		<u>Page</u>
34.	<u>Recommendation: The Court Study Committee acknowledges the Court's considerable progress in simplifying existing Court forms. The Committee recommends, further revision of the small claims forms, to delete existing legalistic terms and to assist plaintiffs and defendants in understanding possible complex consumer defenses on claims filed. Further forms revision is particularly warranted given the high case volume handled by the Court and the staffing limitations, which severely limit the availability of pre-trial assistance from the Court.</u>	99
35.	<u>Recommendation: The Court Study Committee recommends that Superior Court judicial in-service training programs recognize and convey the active role of judges in the small claims forum, and the need for continuing judicial education regarding consumer protection statutes.</u>	99
	The Committee commends the Superior Court Judges for their active and constructive judicial role while sitting in the Small Claims Court.	99
36.	<u>Recommendation: The Court Study Committee recommends that parties filing small claims cases be provided informational materials explaining the most frequently encountered court-associated costs in pursuing a small claim. Such information should include the costs associated with judgment collection, with appropriate note that court costs may be recoverable.</u>	100
37.	<u>Recommendation: The Court Study Committee recommends that the Superior Court Small Claims Branch review existing forms and procedures to assure that assistance is available to all litigants in small claims cases.</u>	101
38.	<u>Recommendation: The Court Study Committee recommends that the small claims summons and complaint form notify the defendant that installment payment procedures may be allowed by the Court.</u>	101

		Page
39.	<u>Recommendation: The Court Study Committee recommends that Small Claims default judgments be granted only by a judge after a determination of the defendant's liability and the plaintiffs damages. The judge should ascertain plaintiff compliance with applicable consumer protection statutes before awarding judgment.</u>	103
40.	<u>Recommendation: The Court Study Committee recommends that small claims judgments be paid through the Court Registry rather than directly between the parties. The Committee believes the Court has a responsibility to ensure that Court records accurately reflect payment.</u>	104
41.	<u>Recommendation: The Committee further recommends that the Small Claims Branch routinely notify attorneys who actively practice before the Court regarding the importance of prompt notification to the Court as to satisfied judgments. Consideration might be given by the Court of the adoption of a rule requiring plaintiffs' attorneys to inform the Small Claims Branch through filing a paid and satisfied praecipe that judgments have been paid.</u>	104
42.	<u>Recommendation: The Court Study Committee recommends that the Superior Court Civil Division consider using a contingent calendaring procedure and/or instituting judgment payment plans in contested cases to improve the collection phase of Small Claims Court. Asset examination of the losing party, under oath, by the judge at the end of the hearing should also be considered.</u>	106
43.	<u>Recommendation: The Court Study Committee recommends that the Superior Court Civil Division take steps to expand the use, on a wholly voluntary basis, of mediation and conciliation approaches for resolving small claims disputes.</u>	107
44.	<u>Recommendation: The Court Study Committee recommends that small claims court judges be given the power, by legislative amendment to exercise equity powers in those cases which fall within the small claims court's jurisdiction. The Committee further recommends that the Superior Court and the District of Columbia</u>	109

Bar work together in creating a "bench-book" for Small Claims Branch judges, which would include detailed descriptions of the extent and the application of equity powers in small claims court.

45. Recommendation: The Court Study Committee recommends that the Chief Judge consider substantially reducing the length of judicial assignment to the small claims court even to a period as short as a week or so. 111
46. Recommendation: The Court Study Committee recommends that any judge sitting in small claims court be given appropriate judicial training in advance. 111
47. Recommendation: The Court Study Committee recommends that the Corporation Counsel consider substantially expanding the alcohol diversion program on a pilot basis, to determine whether more defendants would benefit from participation. 116
48. Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division leadership support prompt development of informational materials for use by those coming to Traffic Court. 118
49. Recommendation: The Court Study Committee recommends that consideration be given to shortening the length of assignment of judges in Traffic Court from the present six week average duration. 118
50. Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division leadership explore the identification and inclusion in the Division Benchbook of varying DUI dispositional alternatives to assist judges in Traffic Court. Inasmuch as in the District of Columbia, the power of licensing rests exclusively with the Bureau of Motor Vehicles it might be fruitful for that Bureau to explore dispositional alternatives where appropriate to revocation or suspension of driving licenses. 119

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the statutory courts area: the landlord-tenant court, the small claims court and the traffic court. The Court Study Committee's basic purpose has been to determine how the 1970 D.C. Court Reform and Criminal Procedures Act has worked in actual practice, and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. Court System leadership, and to the community. The D.C. Court System Study Committee is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Statutory Courts Subcommittee was responsible for the principal investigative and analytic work leading to the Court Study Committee's findings and recommendations in the three courts under study. Subcommittee members Eugene Rhoden, Zona Hostetler, John E. Scheuermann, and Susan Freeman Schapiro, Chair, were assisted in the drafting of their report by research assistants Jessica Kunen, Jeffrey Sherman, and Carol Izumi, and by law students Jeff Rahn and Scott Reit. Joe Kaiser, court system specialist, and Samuel F. Harahan, staff director, also contributed to the report's development.

It should be noted that there is a minority report (see Appendix A) to the Landlord-Tenant Section of the Report which reflects the views of Gerald M. Green, Esq., a member of the D.C. Courts System Study Committee of the D.C. Bar.

The Court Study Committee wishes to acknowledge the interest and support of Chief Judge H. Carl Moultrie, I, the other Superior Court judges, court staff, members of the bar, and others concerned with the operation of the Court.

SECTION I LANDLORD-TENANT COURT

Introduction

Housing is a necessity of life. The housing in a city affects every resident, worker, investor and visitor, indirectly if not directly. The quality and quantity of a city's housing stock has a pervasive impact on its quality of life. The appearance of a city, its atmosphere, its people's attitudes, and the nature of its neighborhoods are all vitally affected by housing. Every aspect of it from availability, to location, to condition and maintenance, is, therefore, of basic concern to all the people of the city.

Today in the District of Columbia there is not enough housing and much of the older rental stock is deteriorating. Little new housing is being constructed. Renovation and conversion of apartments to cooperatives and condominiums,

and increased construction of office buildings, have reduced the number of rental housing units and increased their cost. Overcrowding in low income rental units is an increasing phenomenon which may lead to an accelerated deterioration of existing housing units.

As housing patterns and problems have changed over the years, social and political attitudes have also changed. During the past two decades there has been greatly increased citizen demand for "tenants' rights" and "landlord responsibilities". Recent legislation and court decisions have reflected these changing social concerns. At the same time a bewildering array of complex legislation regulating rents, evictions, and conversions to condominiums or cooperative have been enacted. These legislative acts also affect the available supply of housing and its cost.

The D.C. Court System Study Committee of the D.C. Bar believes it is important to recognize that social and economic pressures in this community such as those briefly described above contribute directly to the large number of housing-related disputes which come before the D.C. Superior Court for adjudication.

Housing issues are litigated in several different branches of the D.C. Superior Court. The Small Claims Branch considers security deposit disputes, property damage claims, and unpaid rent claims. The Civil Division adjudicates equitable actions, rent and warranty of habitability actions involving sums in excess of the small claims jurisdictional limit,

and tort claims. The Criminal Division deals with housing, building and fire code prosecutions, as well as with zoning violations. In addition, housing disputes are also heard by a variety of District of Columbia Executive Branch administrative agencies including the Rental Accommodations Commission, the Zoning Board, and the Board of Appeals and Review. The philosophies, priorities and goals of these varied agencies differ, and there are also differences between them and the Court. In addition, it is not uncommon for parallel actions, involving the same parties and circumstances, to be pending before two or more of the governmental institutions with jurisdiction over one or another aspect of landlord-tenant matters. There appears to be little or no coordination among these varying groups.

More than one hundred thousand disputes between landlords and tenants occur every year in the Superior Court's Landlord and Tenant Branch. These disputes involve citizens who are living in and renting housing, and citizens who own or manage housing or who are otherwise involved in providing housing to renters. The housing ranges from owner-occupied private residences to non-resident apartments, and from privately-run to publicly-owned units.

The nature of tenancies, the applicable landlord-tenant law, the increasing complexity of landlord-tenant litigation, the shortage of low-rent housing in the District of Columbia, and the volume of court business, have all changed

substantially in the last quarter-century. Historically, courts have been responsive to the concerns of society and have adapted to changing priorities and needs. However, there has been little fundamental change in the procedures of the Landlord and Tenant Branch of the D.C. Superior Court since the landlord-tenant court was established over 30 years ago.

This section of the Statutory Courts Report of the D.C. Court System Study Committee of the D.C. Bar focuses upon the procedural aspects of the present dispute resolution system in Landlord and Tenant Branch of the D.C. Superior Court and their underlying statutory basis. There is little in this section that is entirely new. Rather, many of the findings and recommendations are applications or adaptations of procedures and devices to the landlord-tenant court that were designed originally to meet similar problems in other forums, where they are now accepted as the norm. The overall impact of this section's findings and recommendations is:

- to recognize the diversity and complexity of much, though not all, of the landlord-tenant court's business;
- to provide means of distinguishing among and responding appropriately to the varied types of matters coming before that court;
- to bring the landlord-tenant court's procedure into greater consonance with procedures of

- 6 -

other parts of the D.C. Court System recognizing the ongoing nature of the landlord-tenant relationship;

- to increase the Superior Court's control over its business, its flexibility in disposing of it, and its capacity to tailor solutions to the problems with which it is presented.

A. Housing Court and Administrative Agency Alternatives

Some jurisdictions have recently opted to replace their traditional landlord-tenant courts and have created comprehensive "housing courts" with exclusive jurisdiction over all aspects of housing, from evictions to security deposits. Other states have taken housing disputes out of the courts entirely and placed the responsibility for resolving those disputes in the hands of specialized administrative bodies.

It is believed by some that creation of an administrative agency or housing court to resolve landlord-tenant disputes has advantages including: comprehensive subject matter jurisdiction separating housing matters from other types of disputes; the development of areas of special expertise on the part of the decision makers and their support staff; a single forum which the community could look to as the place to resolve housing disputes; increased speed and efficiency; and increased uniformity and consistency in the decisions made.

It is the Court Study Committee's view, however, that the achievement of these goals does not require necessarily the creation of a specialized housing court or separate administrative agency. Indeed, some of these goals may not be realized by the creation of a specialized tribunal; and some, or all of these goals may be accomplished within our present system with only relatively minor reforms.

After careful consideration, and for the reasons cited below, the Court Study Committee specifically declines to recommend creation of either an administrative agency or a specialized housing court at the present time to resolve landlord-tenant disputes in the District of Columbia.

The Court Study Committee strongly believes that an administrative agency, as a substitute for the landlord-tenant court, is not the answer. First, it may be inappropriate. Controversies the Court is called on to adjudicate are typically between private parties, about disputes that have traditionally been subjects of court interpretation and resolution -- contract obligations, legal identities and rights, balancing of conflicting interests, devising and adapting sanctions and remedies. An administrative agency is more suited, by contrast, to supervise and regulate the distribution of governmental benefits in accordance with a pre-existing scheme -- as in public assistance or unemployment compensation; and even there, interestingly enough, the questions of legal interpretation, construction, and conflict that arise are generally referred to courts of law. Second,

substitution of an administrative agency mechanism is apt to be ineffective and inefficient, given the apparent inevitability with which virtually every administrative agency of any size becomes an unwieldy and depersonalized bureaucracy; thus, what is probably the major argument for administrative handling -- smooth, streamlined response to volume -- is countered by experience, and insofar as increased efficiency may have been thought to justify sacrificing the protection of greater formality, the end does not support the means. Finally, in the District of Columbia especially, in the view of Committee members experienced in the landlord-tenant area, there already exists a welter of overlapping, uncommunicating, uncoordinated, interdependent agencies having to do with housing (among them are the Rental Accommodations Office, the housing inspectors, the various license and permit authorities, the Corporation Counsel, the District Government's economic development operations). It is imperative that there be at the apex of the existing housing adjudication system an official, authoritative institution with definite, predictable, enforceable sanctions, and with the kind of community visibility and credibility that a court has and an administrative agency usually does not possess.

Our investigation reveals that while a few cities have established separate housing courts in the last decade, most of them have serious deficiencies and are little improvement, if any, over their predecessor courts. We are

also concerned that, like an administrative agency, a separate court may become a dumping ground for less effective judges, and may become over-specialized and bureaucratic, substituting technical facility for a more judicious approach to legal problems.

The Court Study Committee does not, however, believe the door to the creation of a new specialized dispute resolution forum should be closed in the future. Careful attention should be focused upon those jurisdictions which in the past few years have turned to such specialized tribunals as a solution to some categories of housing disputes. Should the reforms proposed in this report not achieve the goals desired, then the issue can be re-examined in light of this effort and the additional experiences of other cities having specialized courts.

B. Historical Development of Landlord-Tenant Dispute Resolution

District of Columbia landlord-tenant laws derive from common law doctrines developed in agrarian England at a time when the primary object of a lease was the land itself; structures were generally considered as incidental by-products of the lease. A landlord-tenant lease under those circumstances represented not only a personal contract but also rights in land -- rights to which the English common law has traditionally accorded special respect. Self-help evictions were

commonly accepted because of the perceived need to protect fields and crops.

Similarly, in the early history of the District of Columbia, an aggrieved landlord more often than not dispossessed his tenant without court intervention. Litigation, if any, came after the fact. Ejectment, the common law judicial remedy available to early property owners, was slow and cumbersome, and consequently few landlord-tenant possessory disputes reached the courts. To replace this informal arrangement, Congress, in 1864, created by statute a "summary" proceeding as a means for property owners to regain immediate possession of their property through court procedures as well as a judgment for any rent in arrears. Tenants were not permitted to raise affirmative defenses (for example, that the premises were non-habitable). Only procedural defenses (for example, that notice was not given) were made available to tenants. The 1864 statute permitted service of process by posting the summons and complaint on the premises in lieu of serving them personally upon the tenant. The Act provided for a court hearing seven (7) days after the return of proof of service. It also permitted a landlord to evict a tenant with the assistance of a United States Marshal. Thus, a procedure far more summary than that afforded any other civil dispute between citizens was established to accommodate landlord suits for eviction and payment of past rent.

The objective of the 1864 Forceable Entry and Detainer Statute was not primarily to create a forum in which landlord-tenant disputes could be litigated. Rather, its objective was to help landlords avoid increasing incidents of violence directed at them as a result of non-judicial evictions. Similar statutes were enacted in many parts of the country at about the same time. The parallel development of a new form of housing unit known as the "apartment" also increased the opportunity for landlord-tenant disputes.

In 1901, at the suggestion of the bar, Congress further regulated the landlord-tenant relationship in the District of Columbia by codifying the common law relating to tenancies and to the procedures for terminating them. As in the 1864 Act, a primary objective was to facilitate speedy recovery of possession of real estate and rent by the property owner or manager.

As the nature of urban rental housing changed, the primary objective of the lease shifted from land to space within a structure. Changes also took place within the economic structure of the rental housing market. Large amounts of capital were necessary, both to construct and to maintain apartment buildings. Owning and managing multi-unit apartment buildings became a business, and in the process much of the personal relationship which had existed between a landlord and his tenant was lost. Corporate forms of ownership and management emerged, making less personal the interaction between

owner and occupant. Many leases evolved into preprinted lease forms presented to tenants on a "take-it-or-leave-it" basis. Increasingly, lease forms absolved landlords of legal liability, and many of these clauses were upheld by the courts.

Prior to 1968 landlords who sought possession of their premises based upon non-payment of rent, or breach of lease, or expiration of a notice to quit, could expect the action to result in a judgment relatively quickly. Up until that time there were few, if any, substantive defenses available to tenants. Two cases were decided by the courts that year which profoundly altered the course of substantive landlord-tenant law in the District of Columbia, and throughout the country. These cases, for the first time, created substantive defenses with which a tenant could resist a landlord's attempt to recover possession based upon either non-payment of rent or expiration of a notice to quit.

In the case of Brown v. Southall Realty Co., the District of Columbia Court of Appeals determined that a residential lease was a contract and should be interpreted according to contract law as well as property law principles. From this premise the Court concluded that the lease between Brown and Southall Realty Company was void ab initio based upon the existence of substantial Housing Code violations in the apartment at the time the lease was executed. Contract doctrines dictate that an instrument made in violation of a statute or regulation which has as its basis a police or regulatory

purpose is void and confers no rights upon the wrongdoer. Thus, a landlord's claim for possession based upon non-payment of rent where the source of the tenant's obligation to pay rent is a lease fails when the lease is determined to be void ab initio.

In the case of Edwards v. Habib, the United States Court of Appeals for the District of Columbia Circuit denied a landlord the right to recover possession of his property after the expiration of a procedurally correct notice to quit where it was determined that the landlord's motive for issuing the notice was an act of retaliation against the tenant for her having reported serious Housing Code violations to governmental authorities. The Brown and Edwards decisions were the beginning of the legal expansion of tenant's rights. These cases were followed quickly by the landmark decision of Javins v. First National Realty Co. which found an implied warranty of habitability in all residential leases, the standards of which are measured by the Housing Regulations of the District of Columbia. The landlord's failure to maintain leased premises up to Housing Code standards constituted a breach of contract excusing the tenant's failure to pay rent and entitling him to contractual damages for the landlord's breach.

The District of Columbia Council codified the Brown, Edwards and Javins cases in 1971. In 1974, the D.C. Council enacted the first of a series of rent and eviction controls

followed by legislation regulating the conversion of rental housing to condominiums. Today the rental housing market is one of the most regulated industries in the District of Columbia. The bulk of the litigation generated by these laws take place in the Landlord and Tenant Branch of the Superior Court.

As the above discussion reflects, substantive laws and court decisions in recent years have benefitted tenants. However, landlord-tenant court procedures have failed to evolve mechanisms to deal with the evolution of law, and the increased case volume. The Court Study Committee believes that the community's interest in the administration of justice, and the Court's own interest in that goal, is best served if the Landlord-Tenant Court is viewed by both landlords and tenants as a neutral forum for the resolution of justiciable disputes. This section contains a number of recommendations to that end.

C. Present Landlord-Tenant Court Procedures

1. Court Jurisdiction

Landlord-tenant court in the District of Columbia is a branch of the Superior Court Civil Division, and is a court of limited jurisdiction. It operates under its own rules of procedure designed to expedite the adjudication of the high volume of landlord-tenant cases that are filed.

Because only landlords may initiate actions in the court, tenants have access to the court only as defendants. If tenants wish to assert claims against landlords (for example, that the premises are without heat) they may withhold rent and assert their reasons for the withholding as defenses to any landlord action that follows to enforce the payment of rent. Tenants may assert counterclaims for money judgments as set forth in Superior Court Landlord-Tenant Rule 5(b) where such claims are based upon rent paid or expenditures are claimed as credits against rent owed.¹ Tenants may raise housing code violations as equitable defenses and seek recoupment and set-off. Affirmative actions by tenants to enforce housing code provisions or other landlord obligations, however, may not be initiated in landlord-tenant court. Similarly, tenant claims based on personal injuries resulting from the condition of the premises may not be brought. Such tenant claims must be taken to another branch of the Superior Court Civil Division.

The great majority of complaints for eviction and possession of real estate are based on non-payment of rent. However, Superior Court statistics for several recent years reveal that only 2% of the total cases brought in landlord and tenant court actually result in eviction.² Most are resolved by payment of rent.

¹ The scope of counterclaims is presently an unresolved question which is currently being considered in a number of cases before the District of Columbia Court of Appeals.

² D.C. Superior Court. Monthly Statistical Reports -- Civil Division January-December 1977. Washington, D.C.

2. Service of Notice on Tenants

A hearing date is set in each landlord-tenant case at the time the landlord files a complaint. Notice of the hearing date (or service of process as it is called) must be given the tenant. Statutory rules requiring service of process upon a tenant are less stringent than those applicable to other kinds of civil proceedings. They are also less likely to assure actual notice to the defendant than comparable requirements in all other branches of the Court.

As the U.S. Marshal's Service no longer endeavors to serve civil process in a timely manner, landlords typically hire special process servers to serve notice, pursuant to Superior Court Rule Civ. 4(c)(2). D.C. Code Sec. 16-1502 (1973 ed.) allows three means of service: personal service by delivering notice to the defendant; personal service by delivering notice to a third party; and posting of the summons and complaint on the building. Although existing case law reveals that posting is the least favored of the three means of service, and is supposed to be used only after "due diligence" to serve notice personally, posting is the means of notification that is used in the vast majority of landlord-tenant cases in the D.C. Superior Court.

The statutory provision allowing posting was intended historically to facilitate service at vacant buildings, not occupied ones. A serious practical limitation to service by posting is that notice which is taped or otherwise "posted" to

the front door of an apartment or other dwelling is easily susceptible to being dislodged before ever being seen by the tenant. Legal service organizations representing tenants report that a substantial number of their clients assert that they never received notice of a pending court hearing and that their first notice of any problem was when they received a writ of restitution indicating that eviction would take place within 72 hours, or when the U.S. Marshal arrived to evict. The view has also been expressed by lawyers representing landlords that some tenants falsely claim a failure to receive notice even though they have seen the posted notice.

The Court Study Committee concludes that service of process in landlord-tenant court should be improved. The Superior Court should take steps to assure that service of process involving posting is restricted to those instances in which the process server describes in writing, under oath, with particularity, the diligent efforts to effect personal service that have preceded resort to posting; the process server should whenever possible slip a copy of the summons and complaint under the door in addition to posting it on the door; and the summons and complaint also should be sent by the landlord's representative to the defendant by regular mail.

Recommendation: The Court Study Committee recommends that Title 16, Section 1502 of the District of Columbia Code be amended to require that, in every landlord-tenant action in which service is made by posting (substituted service), a copy of the summons and complaint shall be sent by the landlord to the defendant by regular mail.

A related issue regarding service of process on tenants in landlord-tenant cases is the seven business day provision in the D.C. Code. Because of vagaries in certain legal holidays between the District government and the Federal government confusion sometime exists about whether a given day counts within the seven business day allowance. Amendment of the D.C. Code to allow ten calendar days for such summons would resolve this problem.

Recommendation: The Court Study Committee recommends that Title 16, Section 1502 of the D.C. Code regarding Service of Summons be amended as follows: The summons provided by Section 16-1501 shall be served ten days before the day fixed for the trial of the action.

3. Caseload Problems

Over 100,000 complaints for eviction and possession of real estate are filed annually in the D.C. Superior Court's Landlord and Tenant Branch.³ As noted earlier, the vast majority of these complaints are based on non-payment of rent. In spite of this extraordinarily high caseload only a single judge is assigned to the landlord-tenant court at any given time.

Between 400 and 600 parties are notified to appear in the Superior Court Landlord and Tenant Branch each day at 9:00 a.m. for the "morning roll call". Although many defending tenants do not appear (and thereby default their cases),

³ District of Columbia Superior Court Annual Report, Table 9, "Comparative Summary of New Case Filings", p. 41 (1979).

between 250 and 300 persons can be observed nearly every morning milling around the relatively small anteroom to the court. Inside the crowded courtroom some litigants must stand because the room is not large enough to seat all the parties. From Court Study Committee observation, many litigants are clearly confused about the Court's procedures.

Since only a single judge is assigned to consider hundreds of landlord-tenant cases each day, many litigants must wait in court nearly all day before their cases can be tried. This waiting is a particular hardship on moderate and low-income litigants -- landlords and tenants -- who lose money when they are absent from work, who may have to hire babysitters, and who cannot afford multi-hour parking fees. For those who are paying lawyers to handle their cases, the long daily court calendars increase the cost of litigation. It is also widely believed that the long daily calendar in the Landlord and Tenant Branch discourages a significant number of potential litigants from coming to landlord-tenant court at all and is a contributing factor in the high (50%) default rate by defendants.

The Court Study Committee understands that the Landlord and Tenant Branch of the Superior Court periodically holds Wednesday evening and Saturday morning sessions to handle continuances or other non-dispositional matters. No effort appears to have been made, however, in recent years, to provide evening

- 20 -

or Saturday Court dispositional hearings as a means of regularly facilitating litigants access to the Court.*

Recommendation: The Court Study Committee recommends that evening and Saturday sessions of landlord-tenant court be scheduled bi-weekly giving due consideration to the convenience of the parties.

Recommendation: The Court Study Committee recommends that the Superior Court experiment with variations in the current landlord-tenant court calendaring procedures for a two-year period. Possibilities include dividing the daily calendar into two parts and scheduling one at 9:00 a.m. and the second in the afternoon; giving daily calendaring priority for litigants with ten or fewer cases on the calendar, or having a separate calendar for certain types of cases. Another possibility is to conduct landlord-tenant court sessions in neighborhood locations rather than in the courthouse.

One inevitable consequence of the staggering case-loads handled in the Landlord and Tenant Branch is the pressure on judges and other court personnel to expedite cases as quickly as possible. These pressures in turn are felt by the litigants. While it is true that many tenant litigants wish to resolve their disputes as promptly as possible and leave the courthouse, the Court Study Committee is concerned that those who are unrepresented by counsel and wish assistance may

* The Court Study Committee understands that in 1967 the Court of General Session experimented with night landlord-tenant court for a three-month period, but the program was dropped due to under utilization. The Committee also is aware that a special Landlord-Tenant Committee of the Superior Court Board of Judges in 1973 recommended expanded night court sessions. Court Study Committee support or endorsement of evening or Saturday landlord-tenant Court sessions assumes the Superior Court would receive additional funding to defray these expenses, and not have to absorb the cost of this added service within existing budgetary resources.

be intimidated by the caseload pressure and the overall atmosphere of this Court, remaining silent or settling their cases to their prejudice.

A statistical study conducted on behalf of the Court Study Committee revealed that 99.5% of all new landlord-tenant cases in the sample were disposed of through summary disposition procedures rather than through trials.⁵ The average disposition time for landlord-tenant cases is 20 days for defaults, 21 days for dismissals and 18 days for confessions of judgment.⁶ The average disposition time in the Superior Court for other kinds of non-jury civil cases was eleven to twelve months in 1978-1979. In the majority of landlord tenant cases, dispositions by default are reached on the return day. Contested cases, on the other hand, are subject to protracted delays before disposition.⁷

With a daily volume of several hundred cases coming before the Landlord and Tenant Branch, the judge in that Court

⁵ Rice, P. An Initial Survey of Information Relating to Representation in the Landlord and Tenant Court Branch of the Civil Division of the D.C. Superior Court, Vol. II at 7 (The American University Law Institute, June 1978).

⁶ After the filing of the complaint, a minimum of 14 days must elapse before the tenant is required to appear (the return date). Due to Court scheduling needs and calendar conflicts by attorneys, the actual disposition time averages 21 days. District of Columbia Court Delay Reduction Project, Interim Descriptive Report - Civil Case Flow. Whittier College School of Law, October 1979 (unpublished).

⁷ Ibid. p. 11, Landlord Tenant Case Flow description.

has little or no time to research or reflect before disposing of a matter. The judge generally has no advance notice of what questions, issues or problems will arise in the course of the daily landlord-tenant calendar. Judges prepare generally for an assignment in landlord-tenant court by familiarizing themselves with court procedures; by consulting with the Civil Division Clerk's Office staff, with representatives of legal service and social service agencies that work in the Superior Court, and with members of the bar who practice extensively in the area of landlord-tenant law. In this way the judge becomes aware of general practices and procedures. The Court Study Committee was pleased to learn that a video-tape film explaining the general workings of the Court has been prepared and is available for judges carrying this assignment.

Even though most judges are patient and thoughtful, the inordinately long daily court calendar is inevitably wearing and does not allow time for the kind of explanations to litigants which would make the process more understandable to them. Nor is there time for judges to explore thoroughly the facts and reasoning behind inarticulate statements of unrepresented litigants.

A landlord-tenant dispute is one of the most common matters likely to affect the average citizen in the District of Columbia. For many litigants in landlord-tenant court, it is their first exposure to the D.C. Court System. (The most common exception is the landlord with multiple rental units

who may regularly appear in landlord-tenant court.) For other tenants and small landlords, landlord-tenant court is their only exposure to the Superior Court. The congested, confused, and hurried atmosphere of the Landlord and Tenant Branch adversely affects the reputation of the Court and fosters disrespect for the judicial process.

The Court Study Committee concludes that there is a seriously inadequate allocation of judicial and related supportive Clerk's Office resources in the landlord-tenant area. Added to the sheer volume of cases, is the growing legal complexity of many landlord-tenant cases due to various statutory and substantive law revisions. The Committee believes it is unrealistic to expect a single judge to handle competently the workload routinely coming before the Superior Court Landlord and Tenant Branch.

Recommendation: The Court Study Committee recommends the appointment of at least one more judge to the Landlord-Tenant Court in the D.C. Superior Court. One judge could be deployed full-time to handle scheduled motions and trials, while the other judge handles the first call and all non-scheduled and emergency matters.

There is also a lack of predictability and uniformity in judicial procedures and dispositions. This is, in part, the result of the fact that landlord-tenant law has been undergoing significant changes in the last decade and, in part, a result of the fact that different Superior Court judges rotate in and out of landlord-tenant court at four to six week intervals. The Court Study Committee was informed

that the chief clerk of the Landlord and Tenant Branch routinely meets with judges when they are assigned to the court. The purpose of these briefings is to review policy and procedural areas and to orient the judge before beginning the assignment. This interaction between the Civil Division Clerk's Office and judges assigned to landlord and tenant court appears to provide useful orientation; however there remains wide variation in the actual conduct of the court depending upon which judge is sitting at the time. For example, some judges dispose of short non-calendared matters promptly upon taking the bench, while other judges require any such motions or other similar matters to wait until the end of the morning calendar. One result of the wide variation from judge to judge in conducting the business of the landlord and tenant court is that counsel and litigants spend inordinate periods of time waiting to have their matter considered. More predictability and certainty of court procedures, particularly in the mornings, would be of great benefit to all. The landlord and tenant court benchbook could usefully include a section outlining the customary scheduling procedures and practices followed in this court.

All 43 Superior Court associate judges, and retired judges are eligible for assignment to landlord-tenant court at the discretion of the Chief Judge. Because of the staggering case-loads and resulting conditions, however, few judges seek or welcome an assignment to landlord-tenant court. Consequently, even those judges who are well versed in landlord-tenant law,

and able to handle a large volume of cases effectively, do not spend an appreciable amount of time in the landlord-tenant court.

Recommendation: The Court Study Committee recommends that a landlord-tenant benchbook be developed at the earliest opportunity to define and standardize court policies, procedures, and dispositions in various categories of cases. The benchbook should also provide a compilation of relevant substantive laws; be updated periodically, and provide procedural guidance as to the conduct and flow of court proceedings.

To handle the paperwork generated by the vast volume of litigation, the Landlord and Tenant Branch has its own Clerk's Office, and is governed by a separate series of procedural rules. Forms are used extensively. Landlords seeking to recover possession of real estate are required to file a verified form Summons and Complaint (L&T Form 1); a form Affidavit for Proof of Service (L&T Form 2); a form Notice of Intent to Seek a Writ of Restitution (L&T Form 3); a form Consent Judgment Agreement (L&T Form 4); and a form Notice that the Tenant has failed to abide by a consent agreement (L&T Form 5).

The Landlord and Tenant Branch Clerk's Office has developed procedures to improve the handling of huge volumes of paper work generated by over 100,000 lawsuits per year. This highly trained support staff copes unusually well with tasks such as assisting the public, accepting cases for filing, verifying service of the summons and complaint, preparing court calendars, issuing writs of restitution, making docket entries, and processing appeals.

- 26 -

Both landlords and tenants have numerous questions to ask the court clerks. Court personnel spend a large amount of time explaining to landlords, for example, how to file and serve eviction notices and how to effect eviction after judgment. (The pressures on the clerks to answer inquiries can be expected to increase dramatically if the D.C. Bar's L&T information office closes in July, 1981.)

Separate dockets are kept with respect to each landlord-tenant case filed. Until recently these dockets were current. Entries were made daily. However, the volume of paper work processed by the Landlord and Tenant Branch Clerk's Office has dramatically increased in recent years due to greater use of the court registry for escrow deposits, and other related motions and pleadings. It has increased to the point where there now exists a backlog which results in anywhere from a four to nine workday delay in entries being made on the court docket.

Inquiries concerning the status of a case which up until the past few years would be answered by the Clerk's Office staff in a minute with current dockets now require a search of stacks of unprocessed papers. The result is additional delay for litigant or counsel and inefficiency for the Court. While such delay is small in comparison with the Civil Division where case progress is measured in months, it poses a tremendous problem in the landlord and tenant area where progress measured in days is of great importance. The

current situation is not the fault of the court staff. The Court Study Committee wishes to commend the Chief Deputy Clerk of the Landlord and Tenant Branch and his staff for performing in an exceptional manner under adverse circumstances. The heart of the problem appears to the Committee to be too few people trying to accomplish too much. We are mindful of the current court budget situation but feel compelled to recommend that some priority be given to augmenting the support staff in the Landlord and Tenant Branch.

Recommendation: The Court Study Committee recommends that the Superior Court add at least two clerks to the Landlord and Tenant Clerk's Office staff so that it can abolish or substantially reduce the current back-log of paperwork.

4. Daily Court Calendar

Approximately 59% of the matters in landlord-tenant court each day are handled by default and consent judgment procedures before the judge takes the bench.* The first item of business for a judge upon taking the bench at around 10:00 a.m. is a roll call of all cases scheduled for a complete trial, with introduction of evidence, witnesses, etc. In open court, the judge generally inquires about the nature of the issues that will be involved in the trial and often urges the litigants to try to resolve their dispute by compromise and settlement before trial. The cases to be tried

* Op. Cit. Whittier.

are then passed to permit the court to conclude the remainder of the non-trial calendar.

The next series of cases considered by the landlord-tenant court judge includes preliminary matters, cases on the calendar for the first time, and continued cases. Those cases on the calendar for the first time include cases which were not settled between the end of the first roll call which began at 9:00 a.m. and the time the judge took the bench. Some of these cases are decided by the judge on the spot. They include cases in which the tenant disputes the landlord's claim on the grounds for example that the premises are in substantial violation of the D.C. Housing Code; that the landlord's action is retaliatory in nature, motivated by the tenant's assertion of legal rights; or that a notice to quit (a condition precedent to a suit for possession), was neither knowingly waived in writing by the tenant nor properly given by the landlord. If the judge is unable to decide these unresolved matters with expedition, the case will be set for trial at a later date.

Cases continued from previous days are considered next on the daily court calendar. Answers are accepted for filing, petitions to proceed in forma pauperis are considered, bench trials are set for hearing between four and six weeks away, or if a jury trial is requested, the matter is certified to the Civil Assignment Office to be calendared on the civil jury trial calendar.

Following the cases continued from previous days, the court hears motions set for the day. Motions can range from relatively pro forma motions for judgment based upon failure to comply with consent judgment agreements, or to pay protective orders, to complex "mini-trials" known as "McNeil Hearings" which determine the disposition of funds deposited into the court registry pursuant to protective orders. In recent years, especially since the advent of the Landlord and Tenant Branch Interview and Judgment Clerk procedure, the Court has experienced a significant increase in the number of motions filed in the Landlord and Tenant Branch. Protective orders -- orders of the court which require tenants to prospectively deposit rent into the court registry pending the final determination of a contested case--have also contributed to the increase in the number of motions. There is every indication that this trend will continue.

Upon completion of the motion calendar, the landlord-tenant court commences trials in those cases which have not been settled. Rarely does the court reach the trial calendar until the afternoon session. A typical bench trial in landlord and tenant court will take from one to two hours to complete. As a general rule, the court will decide the case from the bench at the conclusion of the trial. Where a complex legal or factual issue has been raised during the course of trial, the court may take the case under advisement and render a written opinion. Occasionally, a trial will require more than one or two hours to

complete. Since only one judge is assigned to the Landlord and Tenant Branch, when a trial is commenced, all other trials scheduled for that day are continued to the next available date.

5. Pre-Hearing Case Review

Each of the over 100,000 landlord-tenant cases filed in the Superior Court is processed in a more or less identical manner. The cases sort themselves out, subsequent to the commencement of court proceedings on the day they are scheduled to be heard. In fact, some cases are vastly different from others. In some cases the tenant may have failed to pay the rent when it was due but by the time of the court appearance is able and willing to pay. When the landlord is willing to accept the rent, there is no need for the case to be continued on the court's calendar. In other situations, the tenant may be unable to afford the rent and in need of less costly living quarters. The most effective response may be a prompt and effective referral to the appropriate social assistance agency. In other cases--which may appear to present the very same non-payment of rent circumstances as those in the first category -- rent may be withheld because of a dispute over repairs. Or there may be an issue involving the identity of the landlord, or confusion about rent payments made or received, or a disputed allegation that a previous settlement agreement has not been carried out, or a complaint concerning violation of a term of lease -- and so on.

The more promptly and accurately the court diagnoses the problem in each case, the more efficiently and effectively available remedies and appropriate procedures can be prescribed -- and the more soundly and appropriately for all concerned, the Court can allocate their own inevitably strained resources. While the Court Study Committee believes it is a critically important fact to recall that some landlord-tenant cases are more complicated, legally and procedurally, than formerly, this is not equally true of all cases, and it is as unnecessary to apply the panoply of legal and procedural options to some cases as it is unfair to deny them to others.

The Court Study Committee concludes that the Superior Court Landlord-Tenant Branch is not equipped to identify, in any systematic and meaningful way, the types of legal or non-legal issues individual landlord-tenant cases present, and that, as a result, all parties in landlord-tenant cases, their counsel, and the Court are adversely affected. As a remedy, the Court Study Committee favors introduction of a mechanism which will facilitate preliminary case categorization and screening in landlord-tenant cases, to take place on or before the initial court appearance date for a case, and after the filing of the complaint, service and return of service.

It is suggested that a new category of court personnel (either employed by the court or furnished to the court by some other court-approved organization) be utilized to review as many cases as possible before the regular calendar call

commences, initiating contact with parties by telephone and letter, and responding to calls or visits of parties and their counsel. These persons, hereinafter referred to as screeners, might be available at the courthouse each weekday at 7:30 A.M., as well as certain evenings. In addition, their telephone number might be made available to all parties (for example, on complaint forms) and notice given that those defendants who do not dispute claims of rent owed. Those who believe their rent has been paid and there is no longer any dispute, can telephone the screener's office ahead of the scheduled day for trial and obtain assistance in contacting landlord plaintiffs for the purpose of resolving their cases without the necessity for any court appearance or hearing. Those parties, plaintiffs or defendants, who wish to consult legal counsel could be advised by the screeners of bar referral services and legal assistance programs. Ordinarily, unrepresented parties in complex cases, or cases involving negotiating settlements for large sums of money, would be advised to consult legal counsel before the time scheduled for hearing, unless the hearing is imminent and no counsel is immediately available, in which instance, unrepresented parties would be informed that the matter would have to be submitted to the judge as scheduled and that motions for continuances in order to obtain counsel would have to be decided by the judge.

In those cases where there is a disputed issue of fact or law which the parties have been unable to resolve, the

screeners could, in appropriate cases, advise the parties of the availability of mediation services such as the service recently established in the Superior Court Citizen Complaint Center by the Center for Community Justice.⁹ The screeners would report to the court those cases involving disputes which cannot be resolved without trial for Court decisions regarding scheduling. Such a procedure would eliminate the necessity of those parties, and their lawyers, sitting around court all day. Screeners could also provide both plaintiff and defendant litigants general information concerning court procedures and their rights and responsibilities in landlord-tenant cases, although legal advice as to a particular course of action which should be followed ordinarily would not be given -- rather, parties would be referred to legal counsel for such advice. This procedure has been followed very successfully during the past two years by the D.C. Bar's pilot landlord-tenant information and referral service project, which has provided information fairly, and on a non-advocacy basis, to both landlord and tenant litigants.

Pre-hearing screening has been used for some time in juvenile delinquency cases; by bail agencies in criminal cases before the initial judicial appearance; and by public defender agencies in criminal cases to determine defendants' program eligibility and by magistrates in U.S. District Court civil

⁹ See Subsection I-D., 1 of this report for further discussion of the conciliation and mediation area.

- 34 -

cases to identify issues in dispute and facilitate settlement. In each of these other areas the work of the court is facilitated, and the decision process assisted, as a result of the form of preliminary case review taking place.

Competent, experienced screeners would, of course, be essential. Landlord-tenant screeners should be well-trained paraprofessionals of the sort that have staffed the D.C. Bar's Landlord-Tenant Information and Referral Service office, or the D.C. Pretrial Services Agency.¹⁸ (The D.C. Bar has employed legal assistants who have had one to three years of law school education. The experience of that office provides an illustration of the efficacy of screening, for on an ad hoc basis, it has been able to facilitate the resolution of many disputes before trial and obviate the need for a judicial hearing.)

It is believed that such a screening service would reduce the number of cases scheduled for judicial hearing significantly, thereby allowing the judge and parties in those cases which are heard an opportunity to present and decide cases in an orderly and less hurried atmosphere than now exists. The Court Study Committee believes that such a service would benefit the Court and litigants alike.

¹⁸ Court Study Committee support or endorsement of a screening process, including staffing, assumes the Superior Court would receive additional funding to defray this service, and not have to absorb the program within existing budgetary resources.

Recommendation: The Court Study Committee recommends that the Superior Court institute a landlord-tenant case screening procedure to facilitate early analysis of cases. The case screening procedure would identify cases where both parties wish to settle or mediate their disputes thus obviating the need for trial; provide referral information to parties who need legal counsel or the assistance of mediation; inform litigants of court procedures, their rights and responsibilities and of the necessary information and documents the Court will need to consider the case.

As noted earlier in this report the Court Study Committee recognizes fully the fiscal exigencies and competing priorities which face the D.C. Superior Court leadership both as to adequately supporting present programs, and as to initiating new approaches to handle the business of the court. The Committee concluded that the presence and effective deployment of pre-hearing landlord-tenant case screeners offered the best possibility of materially benefitting litigants appearing in this court, and expediting the work of the landlord-tenant court.

Additional approaches might also be explored by the Court leadership to shorten the daily landlord-tenant calendar call and facilitate early litigant access to legal or other assistance. One such approach considered by the Court Study Committee which could be undertaken as a pilot project included the following elements:

1. Defendant tenants check-in with the clerk at 8:30 a.m.
2. At the time of check in defendants receive a printed instruction sheet which includes a summary of defenses and procedures.
3. Announcement and initial call of calendar at 9:00 a.m. (9:30 a.m. during Pilot Program). The call is limited to people who check in. It is necessary to allow landlord attorneys to know who has appeared.

- 36 -

4. Following shortened call and second call, initial announcement is repeated and tenants advised:
 - a. that they may adjourn to a designated area to meet with free counsel -- receive further information on defenses and obligations;
 - b. meet with landlord's lawyers in a designated area;
 - c. inform the courtroom clerk they wish to appear before the judge.
5. Tenants who come in late are referred to free counsel or landlord attorneys. A note of each late check-in is made by the clerk to indicate to landlord's attorney who has arrived.
6. Settlements between pro se tenants and landlords entered as present.
7. Contact between free counsel and landlord attorneys to be arranged. (Cases continued by agreement, etc.)
8. Court takes the bench at 10:00 a.m.

Recommendation: The Court Study Committee recommends that the Superior Court leadership consider various approaches to facilitating the daily landlord-tenant court calendar and early litigant access to legal or other assistance. Included should be examination of the pilot project outline found on Pgs. 35-36 of the Statutory Court Report.

6. Litigant Understanding of Landlord-Tenant Court Procedures and Practices

The tremendous daily case volume handled by the landlord-tenant court makes it difficult for the Court to make understandable courtroom operations and procedures. Combined with the high landlord-tenant court caseload levels is the fact that many litigants appear in court for the first time

the morning of their scheduled appearance, and without benefit of counsel.

Approximately 98% of the tenants are unrepresented by legal counsel. Conversely, only about 3% of the landlords are unrepresented.¹¹ Ordinarily, a handful of landlord lawyers or other representatives for the large landlords will be in court representing landlords who own multiple rental units. In addition, there are usually a number of small landlords (typically a family renting out a room or apartment in their residence). Often these small landlords are also unrepresented and unfamiliar with court procedures.

Given the unrepresented character of the majority of litigants in the landlord-tenant court, the Court Study Committee believes it is essential that every effort be made to assure parity of access and understanding as to court procedures by all litigants using the court. The Committee takes note of such recent communication/informational improvements as the multi-colored directional signs located near the entrances to the court informing people of where the various court offices are located. Additionally, the establishment two years ago in conjunction with the D.C. Bar of an information office

¹¹ Rice, P. *supra* note 5, at 7. See also Report of the Committee on Civil Legal Services of the Judicial Conference of the District of Columbia (hereinafter cited as Report of the D.C. Judicial Conference Committee on Civil Legal Services), Appendix A "Survey of Need for Civil Legal Services by Persons Appearing in D.C. Superior Court and Survey of Resources to Meet Those Needs", at p. 17 (May 15, 1980).

in the Landlord and Tenant Branch has helped provide information to landlords and tenants alike about court procedures and other matters. This office, however, is too small and insufficiently staffed to serve the several hundred persons who appear each day in this Court. Moreover, the office was set up with private foundation funding only as a pilot project. No plans have been announced by the Superior Court or the other branches of the District of Columbia government to continue operations of this office when the funding expires in the summer of 1981.¹²

The Landlord and Tenant Branch of the Superior Court has also developed over the past years a broad array of pre-printed forms to facilitate the business of this Court. The Court Study Committee supports the concept of using standardized court forms where possible, but is concerned about the legalistic language and tone of the various forms currently in use. Courts in a number of other jurisdiction have made substantial in-roads in simplifying landlord-tenant court forms and related informational materials.

Related to the matter of providing litigants additional information, more understandable forms and other similar improvements is the issue of the language used by the Court. The everyday terminology of landlord-tenant court,

¹² A recent D.C. Bar referendum vote by Bar members precludes the use of mandatory bar dues to pay for the operation of the Bar's landlord-tenant information office.

while commonplace for court employees and attorneys, appear to seriously confuse many litigants. Expressions such as "file responsive pleadings", "default judgment", and "protective order" are used often, but rarely explained by the court. A member of the Committee observed one unrepresented tenant's bewildered expression after being instructed by a clerk to "go get your jacket."

The Court Study Committee is also concerned that the instructions given in the courtroom each morning by the courtroom clerk are not readily understood by litigants. In open court an announcement is read at 9:00 a.m. by the courtroom clerk explaining that information and referrals for legal or social services are available in the Bar's Landlord-Tenant Information and Referral Office; that an indigent may request the Court to appoint a third year law student to represent him or her at no charge; that a landlord or tenant should not sign any agreement which is not completely understood, or which contains conditions not agreed upon; and the steps a landlord or tenant should take if his or her name is not mentioned during the roll call.

The courtroom clerk's morning announcement is read once and constitutes the only official explanation offered to litigants about the procedures which follow. By Committee observation a significant number of litigants do not arrive at the court by 9:00 a.m. in time for the reading of the introductory comments, and as a result they do not receive the information contained in the announcement. The Committee also noted

that the clerk does not always include an announcement of the availability of legal service referrals. Since a number of topics are covered in the morning announcement, and it is read quickly and without particular emphasis, it appeared from Committee observation to be a largely ineffective method of providing litigants with meaningful information and assistance.

The Law Enforcement Assistance Administration supported technical assistance study of landlord-tenant court cited earlier noted: "It is this oral announcement in court each morning that has been the most criticized." The LEAA study goes on to state:

Despite the physical presence of most defendants, because of the way in which the announcement is made, few both understand and comprehend its significance.

In interviews with . . . (the presiding judge) and with virtually every legal service attorney, the belief was expressed that the announcement by the Clerk during the call of the docket is given in a perfunctory manner, not comprehended by the tenants (due, in large part, to their confusion, and the stress of the event) and therefore is largely ineffective.¹²

The Court Study Committee concludes that the morning courtroom announcements contain critically important information of use to landlords and tenants as well. Serious consideration should be given to substantially revising and even subdividing the morning announcement. For example, if during the morning calendar call tenants are sent from the courtroom

¹² Rice, P. supra note 5, at 15.

to discuss negotiation and settlement with landlords, it would be very relevant at that time to announce the availability of legal assistance program attorneys so parties may have any questions answered. Parts or all of the morning courtroom announcement should be repeated or summarized at appropriate intervals. Copies of the text of the morning landlord-tenant court announcement should be affixed to a publicly convenient bulletin board adjacent to the courtroom.

Of related importance is the fact that neither the morning announcement, nor any other notices to landlords and tenants, written or oral, inform them in a meaningful way of issues which they can raise in litigating their case. A party inexperienced with the landlord-tenant court (most typically a tenant) is likely to have no idea of what facts, rent payment receipts, photographs, or other documents, are important to his or her case, or of the sequence in which to present them. Since most tenants come to court for the first time on the day of the hearing, it is too late at that point to assemble the evidence necessary to support their defenses or counterclaims.

Information concerning basic rights under landlord-tenant laws, and the supporting documents or other information necessary to establish those rights, should be provided all litigants. If a system of case screeners, outlined earlier in this report, is adopted, this kind of information can be provided in advance of any court hearing.

In addition to improving the relevance and understanding of existing landlord-tenant court information sources, the Court Study Committee urges the Superior Court leadership to consider new ways of making court procedures understandable to all parties. Kiosks supplied with recorded tapes to answer frequently asked questions, slide presentations, and brochures are all possible tools which should be considered. The Committee would also urge that the existing landlord-tenant summons forms be revised to include instructions as to the documents and other materials the litigant should bring to Court.

Recommendation: The Court Study Committee recommends that the Superior Court leadership initiate steps to assure that all litigants are clearly informed of landlord-tenant court policies and procedures. An adequately staffed landlord-tenant information office should be maintained to assist all litigants.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division Administrative Judge, in consultation with the landlord-tenant court Clerk, members of the Bar, and others, substantially revise the content of, and the procedure for giving the opening information announcements currently delivered in Landlord-Tenant Court at the start of each day's proceeding. The various announcements should be divided into segments, given and repeated at the beginning and end of the calendar call. Copies of the announcement should be posted outside the courtroom.

Recommendation: The Court Study Committee recommends that existing Landlord and Tenant Branch forms and informational materials developed for the use of litigants be reviewed. Where necessary to insure comprehension and understanding, materials should be rewritten, deleting language and terms not readily understandable by the lay public.

7. The Need For Fair And Equitable Landlord-Tenant Court Proceedings

After the 9:00 a.m. procedural announcements are concluded in landlord-tenant court, the clerk calls in turn the names of each litigant whose case is on the calendar. In a large number of cases called, the tenant is not present and a "default" is immediately entered in favor of the landlord. This Court practice does not apply as well, however, if the landlord is not present, as the case is passed to the end of the calendar and then called a second time. If the landlord fails to respond to this second call, the case is dismissed "for want of prosecution." The Court Study Committee believes this dissimilar treatment of landlords and tenants undermines the proper perception of the Court as a neutral forum for adjudicating disputes.

The 9:00 a.m. landlord-tenant court announcement includes a statement urging all parties to settle their disputes by negotiation in lieu of spending several hours in court waiting to litigate them before a judge. Additionally, attorneys representing landlords who own multiple rental units are routinely permitted each morning in court to interrupt the court proceedings after the clerk has called all the cases involving their clients' properties. These lawyers interrupt the morning calendar call and ask that all tenants of certain dwellings meet with the lawyer, in the anteroom. This announcement made in open court during the progress of the morning calendar call is interpreted by many tenants to be an "official instruction" of the court ordering the tenants to meet with the landlord (or more usually the landlord's lawyer). Legal service program

representatives have reported instances of tenants who thought that the landlord's lawyer was an official of the court. Tenants are told by the landlord's lawyer to follow him. Once in the anteroom tenants form long lines waiting to explain the facts of their cases to the landlord's lawyer (who usually knows nothing about the facts of the particular cases) surrounded by noise, interruptions, and confusion.

Although the landlord-tenant courtroom clerk urges the parties to negotiate and settle their cases in order to dispose of their disputes quickly, no suitable facilities are available for this purpose. Rather, discussions must take place in the crowded anteroom and nearby corridors. Moreover, no advice about the consequences of settling or not settling is provided unrepresented parties, nor are any neutral third parties or mediators routinely available.¹⁴ Substantial injury to an unrepresented litigant can result from these settlement interviews.

In spite of the fact that the courtroom clerk has urged both parties in a case to engage in "settlement negotiations", little negotiation actually occurs in this setting. Tenants often are unaware that they have any real opportunity

¹⁴ Occasionally, private parties will utilize the services of the D.C. Bar's Information and Referral Service personnel as mediators, but this is the exception, not the rule. (Judges also occasionally appoint mediators but this is usually for cases still on the calendar after the morning "settlement" negotiations and is too late for those cases in which the parties have already signed a settlement agreement.)

- 45 -

to negotiate or any alternatives to negotiation when they meet with the landlord's attorney. We agree with the observation recently made by Judge Frank E. Schwelb of the D.C. Superior Court in Willoughby Real Estate Co. v. Sanders (L&T No. 11911-81 at 4-5):

There is also some variety among the tenants in terms of resources, education, sophistication in the ways of the Landlord and Tenant Branch, and general "street smarts." On the basis of its observation of the affected tenants, the Court has concluded that, despite substantial efforts on the part of court personnel to help, some or even many litigants do not understand their rights and are dealing with the landlord's representative from a position of ignorance and economic vulnerability. A number appeared genuinely unaware that they are not required to sign what the landlord's representative has asked them (or, from their perception, told them) to sign. Some have not understood that they are negotiating. A substantial percentage of the tenants who eventually claimed housing code violations failed to mention them to the landlord because they did not know that rats or leaks or falling ceilings affect their obligation to pay rent. Few tenants, if any, perceived any connection between housing code violations and a demand that they pay late charges.

* * *

As the Court stated in Javins v. First National Realty Corp., 138 U.S. App. D.C. 369, 377; 428 F.2d 1021, 1029 (1970), cert. denied, 400 U.S. 925 (1970):

the inequality in bargaining power between landlord and tenant has been well documented.

The current daily courtroom practice whereby unrepresented tenants are instructed to follow certain landlord

- 46 -

lawyers or agents out of the courtroom for purposes of negotiation and settling their cases should be ended. (A system utilizing trained screeners, as proposed above, would also obviate the need for continuing this practice.) Even in the interim, the practice should be discontinued promptly. The Court should not be in the position of appearing to support or favor any party. In lieu of the current practice, all parties could be advised of the possibility of settlement together with a warning that settlement should not be entered into without advice of counsel. Information should be given by the clerk or by other neutral parties as to where in the anteroom (or color-coded sections of the anteroom), adjoining rooms, or elsewhere, legal counsel can be found, and where landlord lawyers can be located.

In any event, a landlord's lawyer should not be permitted to stand up in the courtroom and, with the tacit approval of the Court, instruct specific parties in litigation with the landlord to follow him out of the courtroom to settle their cases.

Recommendation: The Court Study Committee recommends that the Superior Court leadership end promptly the current practice of authorizing, during the morning calendar call, the summoning of unrepresented tenants out of the courtroom by lawyers representing landlords for the purposes of settlement negotiations. Should the Court affirmatively determine that it is in the interest of the Court for the parties to be able to pursue either case settlement discussions or lawyer referral and information during the morning calendar call, it is the Court which should inform litigants and not counsel for plaintiffs.

8. Interview And Judgment Clerk¹⁵

For those tenants called out of the courtroom, the landlord's lawyer spends a few minutes with each tenant generally trying to effect an agreement whereby the tenant signs a consent judgment praecipe. These praecipes give the landlord judgment by consent but stay the execution of the judgment upon compliance with terms embodied in the agreement. This court form usually sets forth an agreement by the tenant to pay rent arrearages on a fixed payment schedule, or an arrangement to move from the premises on a date certain. The consent judgment praecipe may include a provision by which the landlord agrees to meet certain obligations (for example, to complete promised repairs, or to provide heat).

In 1979 the Superior Court Civil Division established a new position of Interview and Judgment Clerk. This Clerk has the authority to approve consent judgment praecipes. By all accounts the interview and judgment procedure has been especially helpful when both parties are represented by counsel. Following the execution of a settlement agreement tenants frequently wait in a long line for their turn to have their agreements approved and filed by the Interview and Judgment Clerk. The Clerk asks the tenant whether he or she has a copy of the proposed agreement, whether the tenant has read and understands

¹⁵ Discussion in this subsection is directed at the definition and role of the position of interview and judgment clerk and no reflection is intended or offered as to the performance of existing court personnel in this area.

the agreement, whether the tenant understands that he or she has entered into a consent judgment, and the consequences which will result from the tenants failure to comply with the proposed agreement. Written instructions explaining registry payment procedures are given to the tenant in addition to the Clerk's oral presentation. If the tenant asks questions as to the terms of the agreement, the Clerk may refer the tenant back to the landlord or the landlord's lawyer, or to the judge. If the tenant does not raise questions, the Clerk stamps the agreement "Approved and Filed."

If the tenant fails to comply with the consent judgment decree, the landlord can in some instances go back before the Interview and Judgment Clerk and obtain an eviction notice to take place within 72 hours. If, however, the landlord does not make promised repairs, the tenant must file a new motion and seek an order from the landlord-tenant court judge. Of course, unrepresented tenants are not likely to realize that this course of procedure is available to them if repairs are not made. Nor are they likely to know how to draft and file such a motion.

The Clerk's existing authority does not include questioning the terms of the agreement, asking pro se litigants if they have had the opportunity to obtain counsel, or inquiring into any possible defenses or claims that a party may unknowingly be forfeiting. If a person during the interview with the Clerk takes the initiative and affirmatively states

that counsel is desired and that he or she has a meritorious claim or defense the Interview and Judgment Clerk will refuse to approve an agreement.

The number of cases resolved through the Interview and Judgment Clerk has grown steadily since the position was created. While exact data is not available, knowledgeable court staff estimate that between 75-80% of all cases on the daily court calendar are referred to this Clerk. The Interview and Judgment Clerk also functions as the Assistant Supervisor of the Landlord-Tenant Clerk's Office. When the Clerk is absent, the Supervisor of the Landlord-Tenant Clerk's Office fills in.

From its inception the Interview and Judgment Clerk position has been the subject of controversy. The nature of the position has not been clearly defined. The Court Study Committee has a number of questions or concerns about this position. Is it appropriate that the position be filled by an individual with no formal legal training as it now is? Does the position require the expertise of a lawyer? Should the officer be subject to supervision by a judge rather than by another supervising clerk? Is the Interview and Judgment Clerk not a quasijudicial officer, rather than a non-judicial employee whose duties are purely ministerial? If so, there is a serious question whether that person should be asked to perform the functions assigned. Approving consent agreements, entering judgments and enrolling them on the record have been traditionally viewed as judicial functions.

Moreover, the Court Study Committee believes the Court, and therefore the Clerk, has an obligation to explain to pro se litigants that the law in the District of Columbia affords tenants certain defenses to actions for possession and that legal assistance is available. If this is not explained to the tenant, and if the tenant does not understand that a consent judgment may foreclose raising defenses in subsequent proceedings, it cannot be said that the tenant's consent and understanding of his or her agreement is adequate.

The Committee concludes that there is a clear need for the Clerk to explain fully to pro se tenants the consequences and ramifications of a consent judgment. We concur with the position taken by Superior Court Judge Frank E. Schwelb in the recent case of Willoughby Real Estate Inc. v. Sanders, LT 11911-81 in which he stated at page 30:

(I)t is essential that a consent judgment, whether approved by the judge or the clerk, be based on a full understanding by both parties of their rights. Accordingly, it is essential that, before approving a consent judgment praecipe, the Interview and Judgment Clerk fully explain to a pro se tenant the manner in which such a judgment operates. The Court understands that this is already being done. In addition, the Court thinks it essential to inquire of the pro se tenant whether significant repairs are required and, if so, to advise him that he may have legal rights of which he is not aware and may wish to consult with counsel, with a law student, or with the Court. If a tenant claims that repairs are needed, the consent judgment should be referred to the Court for approval, for, if there are substantial housing code violations, this Court has held that late charges may not be imposed. Unless the Interview and Judgment Clerk obtains information about the conditions of the apartment, he cannot determine whether the consent

judgment is approvable under the principle articulated in this Opinion.

The Court recognizes that some counsel believe it to be improper for the Court or for the Clerk to inquire into the need for repairs and thus, perhaps, to suggest defenses to the tenant. The Court must respectfully disagree with this viewpoint, despite the intensity with which it has been expressed. To permit an unsophisticated *pro se* tenant to consent to an one-side judgment and to waive his rights under *Javins* and related cases without apprising him of his rights would, in the Court's view, be an abdication of the Court's responsibility to ensure that its judgments are fair, equitable and in conformity with the law. To explain basic rights to *pro se* litigants is not to take sides, but to ensure a fair contest between the two sides. To do less would not, at least in this judge's view, be compatible with the interests of justice.

Recommendation: The Court Study Committee recommends that the Court review the position of Interview and Judgment Clerk, and if it is to be retained, the Court should provide that the position be filled by a quasi-judicial officer who is trained in the law and subject to supervision by a judge. Alternatively, consent judgments should be approved only by the Court.

Recommendation: The Court Study Committee recommends that the Court adopt procedures to be followed by the Interview and Judgment Clerk which insures that a diligent inquiry is made of every *pro se* litigant as to that individual's understanding of the nature and consequences of his agreement including defenses which may be asserted and the availability of legal assistance.

Recommendation: The Court Study Committee recommends that the Superior Court Rules Committee review the Consent Judgment Praecipe form presently being used and revise its language to make its terms more understandable to *pro se* litigants.

9. Representational Issues

Judges, to varying degrees, are aware of the representational problems in landlord-tenant court, and once on the

bench many will ask unrepresented persons, whose cases have not been disposed of by default or by the interview and judgment process, questions regarding defenses which may exist. The LEAA study cited earlier reported that in its interview with a landlord-tenant court judge, the judge concluded that because of the frequency of affirmative responses concerning legal defenses by tenants addressed by the judge, present notification efforts are inadequate. It was his stated belief that greater efforts must be made to inform defendants personally of their rights. He further stated a belief that the low percentage of tenant representation is due to the fact that a number of defendants either cannot or do not read the notice in the complaint form, and are either not present when the oral announcement is made in court, or do not comprehend it, and make no further inquiry since it was not sufficiently personalized.¹⁶

The inadequacy of notice of the availability of, and particularly the need for, legal representation is generally believed by the Court Study Committee to be a contributing factor in the failure of tenants to seek counsel more frequently. Although the Court attempts to give this information to defendants in a number of ways these efforts could be improved further.

The first notice of the availability of free representation to indigents is provided on the complaint form. The

¹⁶ Rice, P. supra note 5, at 16.

names and telephone numbers of three legal service organizations are provided with instructions to call them if free advice is desired. When persons inquire, the Superior Court Landlord and Tenant Branch Clerk's Office will give them additional referral telephone numbers, or direct them to the D.C. Bar's Lawyer Referral and Information Service.

As noted earlier in this report, the perfunctory morning announcement made by the landlord-tenant courtroom clerk at 9:00 a.m. each day includes advice that tenants have a right to appear through counsel, and of the possibility of free representation if they request it of the presiding judge. Most defendants, however, never appear before the judge, since more than eighty (80) percent of these cases are disposed of by default or consent judgment.¹⁷

As noted previously neither the morning landlord-tenant court calendar call nor any other notice informs litigants in an understandable and meaningful way of issues which they might raise in their defense -- something which might make them further appreciate the need for legal advice or assistance before entering into settlement agreements.¹⁸

In some cases, if a tenant is unrepresented, has not signed a consent judgment before the judge hears the case, and

¹⁷ District of Columbia Courts, 1977 Annual Report. Washington, D.C., p. 66. (Annual Reports since 1977 lack any statistical information on landlord-tenant case dispositions.)

¹⁸ See related discussion earlier in the text at #6. Litigant understanding of landlord-tenant court procedures and practices.

is able to articulate a credible legal defense to the landlord's claim for possession, the judge may suggest that the tenant consult a lawyer and continue the case until a later time. If the tenant is indigent, the court may appoint legal counsel for the tenant -- if such counsel is available. For several months of the year, law students are available in landlord-tenant court for appointment through the D.C. Law Students in Court Program. Approximately 70 third-year law students handle 1,100 cases per year. Legal counsel to tenants is also provided through community legal assistance programs such as the Legal Aid Society and the Neighborhood Legal Services Program. However, as the 1980 Report of a District of Columbia Judicial Conference Committee noted, existing legal services programs do not have the resources to provide representation to all indigent persons involved in litigation in the various divisions of Superior Court.¹⁹

The D.C. Bar's pilot lawyer referral and information office, located in the anteroom of the landlord-tenant court, provides information to tenants and landlords concerning their rights, obligations and remedies, court rules and procedures, and the location of various court personnel and offices. In addition, referrals to lawyers in private practice or with legal aid programs are provided unrepresented litigants desiring counsel. That office also maintains a pleading bank

¹⁹ Report of the D.C. Judicial Conference Committee on Civil Legal Services, supra note 11, at 9-13.

containing sample motions and praecipes and has a collection of books, pamphlets, and other written materials for use by lawyers and pro se litigants. The lawyer referral and information office staff also help litigants contact opposing parties or counsel. This information and referral service presently is scheduled to end in the summer of 1981, however, when the private foundation grant supporting it terminates.

Several judges, clerks, and other persons familiar with landlord-tenant court interviewed in the LEAA study stated their belief that a number of tenants regularly use the Court to gain concessions on, and additional time to pay, their rent. They also suggest that a significant contributing factor to the nearly 50% default rate is not the failure of the landlord's process servers to notify the tenant, or the tenants' reluctance or inability to miss work and come to court, but rather the financial inability of many residents of the inner-city to meet their rent payment obligations. These persons interviewed suggested that without prospects for improvement in the financial condition of many tenants, those tenants may voluntarily be vacating their leased premises after actions are begun. They conclude that counsel in such cases would likely prove to be superfluous.

The Court Study Committee concludes that it is likely that the low percentage of tenants who are represented by counsel is in some significant part symptomatic of the larger socioeconomic problem described at the outset of this report, and is

beyond the control of the Superior Court. At the same time, because the overwhelming majority of tenants -- 98% -- are without legal counsel, the Committee also concludes that valid legal defenses may go unasserted, housing code violations may go undisclosed, and therefore uncorrected, and abuses of process and procedures may go unnoticed.

Moreover, it is more likely to be the tenant than the landlord who is unrepresented by legal counsel and unfamiliar with the procedures. (It will be recalled that in nearly every landlord-tenant case, one or both parties is unrepresented.²⁰ The LEAA supported study of the landlord-tenant branch found that 97% of landlords are represented while 98% of tenants are unrepresented.)²¹ The Court Study Committee concludes that the lack of clear explanation and assistance to unrepresented persons on the part of the Court may help create an impression that there is a collegial relationship between landlords and the Court.²² The Committee believes this perception is buttressed by the fact that most landlord lawyers or agents seem to know the clerks personally, get a "second" chance to make an appearance

²⁰ Report of the D.C. Judicial Conference Committee on Civil Legal Services, supra note 11, at 3.

²¹ Rice, P. supra note 5, at 7.

²² The inequities of the present system apply equally to unrepresented small landlords as well as to tenants. Our recommendations regarding information and representation, including the availability of law student counsel, should therefore apply equally to these litigants.

- 57 -

in Court if they are not present when their names are first called, and are allowed to interrupt the proceedings and summon the tenants out of the courtroom. Landlord lawyers and agents also seem better able than unrepresented tenants to cope with the time pressure and to state their side of the cases quickly and understandably to the judge and clerks.

The Committee believes that it is essential that landlord-tenant court procedures be perceived as fair by all litigants, including persons who are poor and unrepresented. Steps should be taken by the Superior Court to redress the commonly held view in the community that the landlord-tenant court is operated primarily for the benefit of landlords, and in addition is an unwanted stepchild of the judicial system in which the overriding goal is to expedite cases as quickly as possible.

The recommendations made above -- to improve information given litigants, to relieve congestion and the resulting hurried atmosphere, and to screen cases in advance of hearing so that defenses can be ascertained, issues flagged for the Court, and supporting evidence assembled -- should all help to redress what can appear to the public to be an imbalance of equity in landlord-tenant court proceedings. Other actions should also be taken.

A commendable step in the direction of expanding the availability of pro bono legal services was taken by the 1980 Judicial Conference for the District of Columbia which resolved

that every member of the District of Columbia Bar should provide representation in one Superior Court case a year or provide equivalent non-court assistance or assistance in other court proceedings. Similarly, the Administrative Judge of the Superior Court Civil Division at the time this report was in preparation, Judge James Belson, has urged local bar associations, law schools, and legal aid organizations to provide legal assistance to indigent litigants in the Landlord and Tenant Branch of the Superior Court on a year-round basis.

Recommendation: The Court Study Committee recommends that the Superior Court leadership adopt a firm policy whereby before a judgment can be entered in the landlord-tenant court, or a consent judgment approved, defenses or counterclaim must be ascertained of any unrepresented parties present in court and such persons advised of their rights.

Recommendation: The Court Study Committee recommends that the Superior Court insure that either screeners, court personnel, or other persons provide the lawyer referral services now offered by the D.C. Bar's landlord-tenant information and referral office. The Court should also insure that unrepresented litigants who are indigent and in need of counsel are referred in a meaningful and effective manner to legal assistance organizations before judgments are rendered, or consent judgments approved.

Recommendation: The Court Study Committee recommends that the Superior Court encourage law schools, bar associations, and members of the private bar to contribute legal services on a no-fee basis to indigent litigants in landlord-tenant court proceedings.

10. Non-Payment of Rent

In cases where the landlord is seeking possession based upon non-payment of rent the ultimate objective in virtually every instance is not to evict the tenant but rather

to collect the back rent as quickly as possible with eviction being the sanction for failure to pay.²³ In the vast majority of cases the landlord permits the tenant to redeem the tenancy by means of a payment schedule determined either by informal agreement between the parties or by utilizing the consent judgment praecipe (Superior Court L&T Form 4). In many cases the tenant's reason for non-payment of the rent is either a social problem or an economic problem, not reasons which constitute a legal defense to the suit.

For various reasons landlords in the District of Columbia often delay filing a court suit for possession until a tenant is many months in arrears on the rent. Under present law the Court's power to influence the disposition of the case is very limited. For example, unless the landlord voluntarily consents to forebear, the Court is required to grant an unstayed judgment for possession. The landlord-tenant court currently lacks the capacity to systematically identify cases where the tenant's arrearage in rent is due primarily to social or economic causes.

The Court Study Committee is aware that the consequences of some actions by the Landlord-Tenant Court result in direct social or economic hardships to one or both of the

²³ Case filings in landlord-tenant court have averaged more than 100,000 cases each year since 1971 while executed court-ordered evictions average about 2% of case filings.

parties in the litigation. It is both unpleasant and unavailable that the Court must order some tenants to be evicted whose major "fault" before the Court is lack of financial means to pay the rent owed.

The District of Columbia government through the Department of Human Services provides both emergency cash assistance, or emergency housing for families or individuals, displaced or in danger of displacement. The timelines and adequacy of these existing programs which provide emergency housing assistance need improvement if the serious human costs of certain landlord-tenant court proceedings are to be minimized. The Court Study Committee urges the leadership of the Department of Human Services in conjunction with the D.C. Council and others to develop approaches to this existing problem area.

11. Evictions

Court-ordered tenant evictions in the District of Columbia are supervised by the United States Marshal's Service. Upon obtaining an unstayed judgment for possession against a tenant, a landlord must file a writ of restitution before being permitted to evict a tenant. No tenant may be evicted until at least seventy-two business hours after the filing of the writ.

The U.S. Marshal's Service sends a final notice of eviction by first-class mail to the tenant at the time a writ is filed. This is the only notice given to the tenant before the actual eviction, which can be scheduled any day within the

35 day period that the writ is live.²⁴ The notice by the U.S. Marshal's Office allows tenants subject to imminent eviction an opportunity to make private arrangements with the landlord in order to avoid eviction, or to promptly and voluntarily vacate the premises thus protecting their household effects. The actual eviction procedure provides that evictions must be scheduled with the United States Marshal's Service by the landlord on the morning of the day the eviction is to take place. The schedule is subject to the variables of weather and the availability of Marshals. The property owner must provide a moving crew to physically remove the household effects from the premises under the U.S. Marshal's supervision. Currently neither the landlord nor the tenant can plan in advance for the event.

The Court Study Committee believes a number of reforms are needed in the eviction area to make the process function more effectively for all concerned. First, the Committee recommends that the eviction scheduling procedure be changed to provide landlords and tenants five calendar days notice of the actual eviction. (While no eviction scheduling procedure can account accurately for the many inherent vagaries such as the weather and the availability of an adequate complement of U.S. Marshals, it does appear that reforming the scheduling

²⁴ If a Writ of Restitution is not executed within the 35-day period, a new or "Alias" writ must be secured from the Court. A landlord may not seek a writ on a judgment over 90 days old.

would greatly benefit all concerned.) Second, consideration should be given to routinely involving the Landlord-Tenant Consultant Service in any eviction involving tenants over the age of 65 years, or where the tenants are indigent and have minor children.²⁵ In such instances the Committee believes that other temporary shelter should be procured before the tenants are physically evicted. The Court Study Committee supports closer coordination between the Rental Accommodations Office Eviction Section and the Landlord-Tenant Court. Finally, the Court Study Committee favors the District of Columbia Government expanding its existing contract to move furnishings and related items, to include pre-arranged pick-up and temporary secure storage of an evicted tenant's personal effects.

Recommendation: The Court Study Committee recommends that an interjurisdictional group be convened for the purpose of reforming eviction procedures in the District of Columbia. Membership on the group should include the U.S. Marshal's Service, the Rental Accommodations Office, the D.C. Departments of Human Services, and Housing and Community Development, as well as the Superior Court, and others as necessary. The leadership of the proposed interagency group should be from the Executive Branch of the District Government.

Recommendation: The Court Study Committee recommends that at such time when evictions can be scheduled with certainty the tenant eviction procedure be revised to provide tenants and landlords at least five days advance notice of scheduled evictions.

²⁵ See Subsection D-2 of this Report for discussion of the Landlord-Tenant Consultant Service.

Recommendation: The Court Study Committee recommends that consideration be given by judges in Landlord-Tenant Court to routinely involving the Landlord-Tenant Consultant Service in evictions where the tenant is over the age of 65 years, or where the tenants are indigent and have minor children.

D. Ancillary Services to the Landlord-Tenant Court

1. Conciliation and Mediation

Disputes which in the opinion of the judge in landlord-tenant court can be resolved by conciliation or mediation are occasionally referred to the D.C. Bar's Landlord and Tenant Information and Referral Service Office, to the D.C. Law Students in Court Program, or to other legal service programs, depending on the individual judge's inclination to utilize conciliation and mediation techniques. Conciliators used for this purpose have not received special training in techniques of mediation or conciliation, although they are familiar with the relevant areas of substantive law.

Conciliation and mediation are non-adjudicative mechanisms by which an impartial third party with no power to decide the matter or to dictate a solution assists willing parties in arriving at a resolution of their dispute. The parties are not bound to reach a settlement or penalized if they do not. These techniques emphasize the participation of the parties in reaching on their own a mutually satisfactory settlement. They appear to be especially successful in resolving disputes between persons with ongoing relationships, such

as family members or neighbors. These techniques can also be successful in other landlord-tenant disputes where the parties have a more personal, on-going relationship. For example, a landlord operating a boarding house may agree to return a tenant's radio in return for the tenant's agreement to play it more softly. They can also be successful in cases where there are no real facts or other matters at dispute. Thus, where a tenant in a nonpayment of rent suit does not contest the amount of rent due and wishes to vacate the premises, the parties may be able to reach an agreement that the landlord will forgive the past rent and the tenant will vacate the premises on a date certain, or will pay the rent owed in installments.

There has been a growing trend in recent years to establish alternative dispute resolution centers to mediate problems that might otherwise be adjudicated in court. These centers now exist in approximately one hundred communities.²⁶ Often these alternative dispute resolution centers offer the public an opportunity to resolve disputes in less time and at less cost to the disputants than conventional court proceedings. Early evaluations of these projects indicate that they have attracted low and moderate income disputants and that the

²⁶ Salas and Schneider, "Evaluating the Dade County Citizen Dispute Settlement Program," 63 Judicature 174 (1980).

disputants have a considerable level of satisfaction with the results and an even higher level of satisfaction with the process itself.²⁷

An office with staff trained to mediate and conciliate a wide variety of legal problems has recently been established by the Center for Community Justice. (The Citizens Complaint Center is operated by three government agencies: the Superior Court, the U.S. Attorney's Office, and the Office of the D.C. Corporation Counsel, with coordinative assistance by the Center for Community Justice.)

Notwithstanding the positive aspects of both binding and non-binding alternative dispute forums, we agree with the conclusion of the Committee on Civil Legal Services of the D.C. Judicial Conference which noted in its 1980 Report:

Despite these positive aspects of alternative forums, the implementation of such programs suggests a possible danger that high-volume and/or ostensibly routine matters will become prime candidates for reference to alternative forums simply for the sake of reducing court caseloads and delay, without regard to whether the result, in effect, is to reorient the courts more substantially toward larger and larger claims, to the exclusion of low and middle income individuals -- consumers, renters, the disabled, the unemployed. Accordingly, caution should be exercised in the implementation of any such programs in the District of Columbia to assure that their impact on the very persons with whom this report is concerned -- pro se civil litigants -- is carefully evaluated. (Footnote omitted)

²⁷ Shepherd, D. I., J. A. Roehl and R. F. Cook. National Evaluation of the Neighborhood Justice Centers Field Test. U.S.G.P.O., Washington, D.C. (1980).

On balance, the Court Study Committee believes that there are some categories of disputes in the landlord-tenant area that can be appropriately resolved by non-binding mediation and conciliation services when both parties voluntarily agree to use them. We conclude that in many instances these alternative approaches may provide a more effective resolution of landlord-tenant disputes than the court can provide. Mediators and conciliators should be specially trained for their job. Possible further use of the mediation services offered by the Center for Community Justice at the Citizens Complaint Center should be explored.

Recommendation: The Court Study Committee recommends that the Superior Court improve its use of non-binding mediation and conciliation services in appropriate landlord-tenant cases where both parties voluntarily agree to attempt to mediate or conciliate their cases.

2. The Landlord-Tenant Consultant Service

For the past forty years the Landlord-Tenant Consultant Service of the Department of Human Services has provided emergency social service referral assistance and information to tenants appearing before the District of Columbia's landlord-tenant court. Acting in a consultant capacity to the Court, the Service screens those cases where assistance is requested either by the judge or by the tenant directly. Screening is performed for the purpose of determining eligibility to receive emergency financial assistance through the District's welfare system, and/or for referral of the tenant to public and private social service programs in the community. It

takes about two weeks normally to determine eligibility of the tenant for emergency financial assistance during which period the Court usually continues the case. Once a person is determined eligible for emergency rent assistance another six weeks may elapse before the tenant actually receives the temporary financial assistance.

The Landlord-Tenant Consultant Service works with a largely walk-in and telephone caseload, and during most of the period since the 1970 D.C. Court Reform Act was implemented in 1971 as many as 35 to 40 people a day -- or 8,000 to 10,000 a year -- requested help from the Service. Serious budgetary and staff reductions have been experienced by the the Service since 1977, which in turn has reduced the capacity and effectiveness of the operation. At present, although the Court's caseload continues at over 100,000 landlord-tenant filings a year, the annual case intake of the Consultant Service in 1980 is estimated to be less than half its former 8,000 to 10,000 annual level.

While organizationally the Landlord-Tenant Consultant Service is part of the D.C. Department of Human Services, supportive services and space have been provided by the Superior Court in the main D.C. Courthouse. The Court is to be commended for recognizing the importance of locating the vital service in the courthouse itself.

The Court Study Committee also takes note of the strong and continuing interest and support a number of judges, including Chief Judge H. Carl Moultrie I, have shown the

Landlord-Tenant Consultant Service, and we urge that vigorous judicial interest and commitment be maintained.

In a number of places within the text of this Section of the Statutory Court Report the Court Study Committee has taken note of the inherent social and legal interrelationship which occur in many landlord-tenant cases filed in the D.C. Superior Court. The Committee would urge the leadership of the D.C. Department of Human Services and of the Department of Housing and Community Development, as well as the Mayor and D.C. Council to recognize the importance to many, many citizens of the District which a strong and viable Landlord-Tenant Consultant Service provides.

Recommendation: The Court Study Committee recommends that the Mayor and D.C. Council reaffirm their support and commitment to a strong, viable Landlord-Tenant Consultant Service to operate in conjunction with the Superior Court's landlord-tenant court.

3. Housing Inspectors

Housing code inspectors from the District of Columbia Department of Licenses, Investigations and Inspections are involved with the landlord-tenant court through the enforcement of the D.C. Housing Code, and through their visits and preparation of written reports evaluating structures with respect to compliance with District of Columbia Housing Regulations. A tenant complaining of adverse housing code conditions in a rental unit may call the Housing Inspection Branch on weekdays between 8:00 and 10:00 a.m. and request that an inspection be made. The housing inspector cites any observed violations of

the District's Housing Regulations and the inspector's report is sent to the landlord or the landlord's agent. After receiving the report, the landlord has a specific time period, based on the seriousness of the violations, to make necessary repairs. At a later date the Department of Licenses, Investigations and Inspections housing inspector will make a return visit to note repairs made. If all cited repairs have been completed, the Housing Inspection Branch will issue a notice of abatement of violations to the landlord.

Tenants who appear in landlord-tenant court as defendants in suits for possession frequently claim the existence of housing code violations in the rental unit, but lack adequate documentation of the alleged violations. If a tenant does not bring a copy of a housing inspection report or photographs showing the condition of the dwelling, a factual issue may arise as to the existence and causes of defects in the rental unit. In situations where the landlord disputes or seeks verification of the tenant's assertion of housing code violations, the case may be continued pending an investigation. This continuation necessitates another court appearance, delaying the resolution of the case for days or weeks. These delays are reflected in direct expense principally to the landlord but also to the tenant, as well as to the Court.

The Court Study Committee notes that a variety of procedural reforms could be used to facilitate landlord-tenant

court proceedings involving housing code violations. Were tenants to routinely provide copies of recent D.C. government housing inspection reports when initially appearing in court, the judge, or other court officer, would be better able to act on the case in a timely fashion. Similarly having tenants articulate with some specificity the nature of alleged housing code violations at the initial court appearance might also help focus the case more promptly. Some jurisdictions have assigned representatives of the housing code enforcement agency to their courts to facilitate the timely flow of information in this important area. The Committee believes this latter approach has particular merit in the District of Columbia.

The Court Study Committee believes that immediate input from the Housing Inspection Branch would be valuable to the landlord-tenant court in cases where housing code violations are alleged as a defense to a suit for possession based upon nonpayment of rent.²⁹ Where a dispute exists as to the existence, cause, or severity of housing code violations, a housing inspector could be dispatched to the premises in question to make an inspection and promptly report findings back to the Court. In light of the Housing Inspector's assessment, the parties and the Court could then determine on the

²⁹ A special Landlord-Tenant Committee of the Superior Court Board of Judges recommended in 1973 that housing inspectors be attached to the Court directly.

- 71 -

return date whether a settlement agreement, trial or other action is appropriate to dispose of the case.

Recommendation: The Court Study Committee recommends that the leadership of the Department of Licenses, Investigations and Inspections assign several experienced housing code inspectors to the landlord-tenant court for the purpose of immediately inspecting property where housing code violations are alleged and providing reports and court testimony where needed.

SECTION II SMALL CLAIMS COURT

Introduction

The focus of the Court Study Committee in the small claims area has been twofold. First, the Committee has examined the extent of congruence between the existing legislative authority, the 1970 D.C. Court Reform Act, and the present operations of the Small Claims Branch of the D.C. Superior Court. Second, findings and recommendations are offered in those areas requiring change if present D.C. small claims procedures and practices are to be brought into line with important basic goals and purposes of a small claims court.

This section examines goals and objectives of the small claims procedure, history and summary description of D.C. Small Claims Branch of the Superior Court, and procedural and policy findings and recommendations.

Note should be made, at the outset, of a highly useful 1978 research study by the National Center for State Courts which examined and compared small claims courts in fifteen different U.S. jurisdictions, including the District of Columbia.³⁰

The Court Study Committee acknowledges the assistance of the National Center for State Courts in making one of the authors of this research study available to the Committee.

³⁰ Ruhnka, John C. and Steven Weller. Small Claims Courts: A National Examination, The National Center for State Courts (Williamsburg, VA., 1978), 219 pgs.

One additional introductory comment is necessary about this section of the Statutory Court Report and the pertinent reference materials consulted. A number of the other reports of the Court Systems Study Committee offer the reader a statistical and descriptive comparison of D.C. Courts operations before and after the 1970 D.C. Court Reform Act. Where such analysis is provided, it is due in large part to the existence of the 1966-1970 D.C. Circuit Judicial Council study of D.C. courts operations (herein after called the Ellison Committee Report). Unfortunately, a close review of the May, 1970, Ellison Committee D.C. Court Management Study Report and the working papers thereto failed to reveal any substantive examination of the D.C. Small Claims Court. For this reason, the Court Study Committee analysis of the small claims court lacks a before-and-after statistical discussion in this area of local court operations.

A. Small Claims Goals and Objectives

Conceptually, the small claims process is a special procedure, or set of procedures, established by statute, aimed at simplifying court operations for litigants in civil disputes involving relatively small amounts of money.²¹ The underlying attributes of the small claims process include both procedural simplicity and speed of decision-making, as well as the lower cost of this form of in-court dispute resolution when compared

²¹ Ibid., p. 1.

with the more formalized court proceedings used for other civil litigation.³² While the above characteristics of simplicity, speed, and low cost are generally viewed as the primary goals of the small claims process, other elements more recently have been added. These additional objectives include accessibility for the community, fairness, effectiveness and self-representation. From the beginning, the small claims process was contemplated as a forum that could be used by wage earners and tradespeople, as well as by businesses, to collect amounts owed them.³³

B. History and Summary Description of Small Claims Court in the District of Columbia

While the Organic Act of 1801 created the first court for the District of Columbia, and in turn provided for justices of the peace to hear and decide minor criminal and civil matters, it was not until the 1930's that Congressional legislation was enacted specifically, "to improve the administration of justice in small civil cases", ... (in the District of Columbia) .. "to simplify such cases", .. and, "to eliminate delay and reduce cost".³⁴

³² Standards Relating to Trial Courts, ABA Commission on Standards for Judicial Administration, The ABA (Chicago, ILL., February, 1976), p. 136.

³³ Op. cit., Ruhnka., p. 129.

³⁴ Hearings on S. 1835 before the District of Columbia Committee of the Senate, 75th Congress, 1st Session (1937).

The statutory design of the small claims process in the District of Columbia has not changed substantially since its inception. The principal change brought about by the 1970 D.C. Court Reform Act was to increase the jurisdictional ceiling from \$150 to \$750. This jurisdictional ceiling is exclusive: it is the only local adjudicative body empowered to hear civil cases filed by either individuals or businesses involving less than \$750. The Small Claims Branch of the Court can hear only cases involving monetary damages; suits seeking equitable relief must be brought in the Civil Division of the Superior Court.

In a 6-year period, 1973-1978, since the enactment of the 1970 D.C. Court Reform Act, Small Claims Branch filing levels decreased from 35,832 to 26,708, a drop of 26 percent.³⁵ On a comparative basis, of the 15 cities included in the National Center for State Courts small claims research study, the District of Columbia in 1975 had the second highest rate of small claims filings per 1,000 population.³⁶ Given that both individuals and businesses can file suits in the Small Claims Branch, a closer look at the D.C. small claims data reveals that in 1975, 80% of the plaintiffs were businesses, and 20% were individuals.³⁷ In 1975, 86 percent of defendants were individuals and 14 percent were businesses.

³⁵ District of Columbia Courts. 1978 Annual Report, p. 65.

³⁶ Op. cit., Ruhnka, p. 43.

³⁷ Ibid., p. 42.

The Whittier College of Law 1979 Court Delay study of the D.C. Small Claims Branch offered the following small claims case projection data:

- 28,150 new cases would be filed in 1979;
- 4,900 or 17 percent would not be proceeded against because service of process was inadequate or not made;
- 4,230 or 15 percent would be withdrawn by the plaintiff prior to Court appearance;
- 17,110 or 61 percent would be disposed of by the Courtroom Clerk at the Calendar Call as:
 - * consent judgments - 2,010 cases,
 - * dismissed on plaintiffs' request - 1,080 cases,
 - * returned to files at plaintiffs' request because settlement pending - 3,150 cases,
 - * default judgments due to defendant non-appearance - 10,870 cases;
- 1,730 or 7 percent would be disposed of by a judge either through bench trials, (830 cases), or at judicial calendar call, as either defaults with ex parte proof, (710 cases), or dismissals for want of prosecution, (190 cases).²⁰

1. The Pre-Trial Phase

The small claims process begins with the filing of a suit at the D.C. Courthouse. From 100 to 300 cases are filed each

²⁰ D.C. Superior Court Civil Division Caseflow Description., Whittier College School of Law (October, 1979), unpublished.

day. The person filing the small claims suit is informed, before leaving, of the day and time of the trial, and generally, this is the last contact the claimant will have with the Small Claims Branch until 9:00 a.m. on the day of the trial. After a claim is filed in the Court, notice of the suit must be sent to the party being sued.

2. The Trial Phase

Small claims cases in D.C. Superior Court are set for trial by statute within 15 days of the date the case is originally filed. Virtually all small claims cases are considered during the day even though provision exists for evening and Saturday sessions. The availability of evening and Saturday morning sessions is not well known, and the Court's procedures do not facilitate greater use of this optional trial time. Virtually all parties in D.C. small claims cases come to court at 9:00 a.m. on the date set for trial. With daily small claims trial calendars ranging in recent years from 100 to greater than 300 cases, many litigants spend hours waiting for their trial.

Procedurally, if one or the other party in a small claims suit is not in the courtroom at the scheduled trial time, the Court may either continue the case for a later time, or dispose of the case by dismissing the charges or by awarding the plaintiff a judgment by default. Default judgments represent the largest single type of disposition. The National Center for State Courts small claims research study reported that

proof before a judge is required in default cases in D.C. Superior Court, and that this is the general method of handling such matters. Observations by the Court Study Committee, and descriptive materials developed by the Whittier College of Law court delay study, both refute the National Center findings that proof before a judge is the practice in small claims default cases in D.C. The National Center study further reported that in most courts in the research study, - D.C. presumably included - collection agency cases and business claims were not scrutinized as closely as individuals' claims, since business claims tend to be supported by documentation appearing to establish liability, such as signed contracts or purchase agreements, and the claimed damages are for the damages as provided in the contract."³⁹

In practice, all cases set for trial are heard before a judge. The Whittier College of Law court delay study projected for the Superior Court Small Claims Branch that of the estimated 28,150 filings in 1979, 830 would be decided by a trial before a judge, and virtually no cases would be disposed of by jury trial."⁴⁰

A few other aspects of the trial phase in D.C. bear mention. The role of the judge in the small claims procedure is pivotal to the success of the informal court rules and

³⁹ Op. cit., Ruhnka., p. 46.

⁴⁰ Op. cit., Whittier.

procedures, the pro se nature of representation, and the other elements central to the goals of the small claims court. Since the passage of the 1970 D.C. Court Reform Act, Superior Court judges generally have been assigned to the small claims court for a four to six week consecutive period. Elsewhere, the National Center for State Court reports, the average judicial assignment to small claims was one week, and none approach the period designated in the D.C. Superior Court.⁴¹

Despite the continually high filing levels in the Small Claims Branch of the D.C. Superior Court, only one judge at a time has been assigned to this function. The D.C. Superior Court assigns fewer than half as many judges to Small Claims Branch than do most other comparable cities with comparable caseloads. The following chart is illustrative.

⁴¹ Ruhnka, Op. cit., p. 18.

One of the main reasons for frequent rotation of judges through small claims court in most jurisdictions is the increased strain the assignment places on the judge when compared with other civil and criminal judicial assignments. The high volume of activity, the active investigatory role of the judge in the small claims court proceeding, the generally brief and final nature of the proceedings, and other factors contribute to the increased difficulty and strain of this judicial assignment. These factors also suggest the need for ongoing judicial training in the small claims area.

- 80 -

Comparative Small Claims Filing Rates and Judicial

Deployment Levels⁴²

<u>Court</u>	<u>Small Claim Filings</u>	<u>No. of Small Claims</u>
	<u>per 1,000 population (1975)</u>	<u>Judges/Referees</u>
Des Moines, Iowa	52.42	4-6 judges
Washington, D.C.	36.58	1 judge
Bridgeport, Conn.	31.40	1 judge
Eugene, Oregon	28.64	3 judges
Minneapolis, Minn.	28.24	1-2 lawyer/ referees

For those cases appearing on the daily trial calendar which result in a trial, the length of the average small claims trial is less than 30 minutes.

D.C. Small Claims judges actively encourage litigants to settle their suits without resorting to a trial.⁴³ The formal encouragement to settle may be related to the heavy daily small claims trial calendar. As noted above, the D.C. Superior Court Small Claims Branch sets every small claims case for 9:00 a.m. on the date of trial. This calendaring procedure, with its lengthy in-court waiting time for litigants, also appears to motivate case settlements.

⁴² Ibid., p. 43, 125.

⁴³ Ibid., p. 109, 127.

One serious defect in the trial phase procedure noted by the National Center for State Courts study is the lack of equal treatment and court assistance for defendants in small claims courts.⁴⁴ While the Small Claims Branch complaint forms sent to the defendant provide phone numbers of several legal assistance programs, the defendant generally receives no specific assistance from the Small Claims Branch Clerk's office in preparing his/her defense. In contrast, the Court routinely assists complainants in filing their claims on the proper court forms, and advice is offered as to the necessity of having all required receipts, documents and agreements relating to the suit.⁴⁵

Two other aspects of the trial phase of the D.C. Small Claims Court bear mention. The practice of announcing the verdict at the end of the trial is followed routinely in the Superior Court Small Claims Branch and serves a number of valuable purposes, including facilitating payment arrangements while the parties are still in Court. The National Center study also commended this D.C. practice because it contributes to the appearance of fairness and provides the opportunity for the judge to briefly explain the decision if that seems necessary.⁴⁶ The final point to note about the D.C. small claims trial

⁴⁴ Ibid., p. 109, 127.

⁴⁵ 64% of D.C. plaintiffs surveyed by the National Center believed Small Claims Clerks tried to be helpful. (Defendant data was too sparse to be reliable.) Ibid., p. 73.

⁴⁶ Ibid., p. 151.

phase is that the losing party has the opportunity to arrange to pay the awarded claim in installments. This procedure is used in many cases.

3. Post-Trial Phase

From the time of decision by the Superior Court in small claims cases, and the subsequent notification to any party not present at time of court action, parties have three days in which to apply for leave to appeal. Appeals in small claims cases are heard by the D.C. Court of Appeals. Few small claims parties who lose their case request leave to appeal and even fewer are entertained by the appellate court.

Procedures for collecting a judgment include notification to the defendant of the court award and request for payment, court sanctioned installment payments, entering the judgment and attachments at the D.C. Recorder of Deeds Office. These procedures are often used in combination.

In a March, 1979 sample study by the Office of the D.C. Auditor of D.C. Superior Court small claims judgment collections, it was reported that 41 percent of default judgments are collected, and that overall approximately 50 percent of all plaintiffs collect on a judgment regardless of the type of plaintiff - business or individual.⁴⁷ Interestingly, the collection rate when plaintiffs were individuals and businesses

⁴⁷ Office of the D.C. Auditor, Internal Memorandum: Status of Study on Collection of Judgements in the Small Claims and Conciliation Branch. Table 2. March 1979.

were defendants was 71 percent. Half of all collections in the D.C. Auditors study of D.C. Small Claims Court result from attachment proceedings.

One of the problem areas in the post-trial phase is recording payment of judgments in the Court records. The Credit Bureau-- a private reporting service providing its customers information about individuals' credit standing -- collects and records judgment data from the D.C. Small Claims Branch. The recording of judgments in this manner assists the potential creditor in determining whether to extend credit to a given individual. While the Credit Bureau's procedures include periodic updating of its records to reflect satisfaction of court judgments, existing court procedures and practices place a low priority on monitoring and recording judgment payment satisfactions. To address this problem, some jurisdictions require all payments to be paid through the Registry of the Court. This provides the Court with accurate records of payments pursuant to Court orders, and further, assures that an individual's Credit Bureau rating will be based on more accurate records. This procedure is presently followed in the child support enforcement area by the Superior Court's Family Division. Payments pursuant to Court orders are paid into the Court, and the Court in turn makes the disbursements provided for in the Order.

C. Small Claims Procedural and Policy Findings
and Recommendations

The preceding materials describe goals and objectives of the small claims forum, as well as briefly explaining how the small claim process works in the D.C. Superior Court. The following discussion offers a series of findings and recommendations about the Small Claims Branch, using the underlying goals and objectives as the organizing principle.

1. The Objective of Accessibility

The accessibility of the D.C. Small Claims Court includes a number of elements, from awareness of the Court's existence to ability to participate in the court process - either as defendant or plaintiff - without undue burden and on an equal footing.

a. Awareness

Based on annual filing levels and rates, it is clear that the D.C. Superior Court Small Claims Branch is being used extensively. When use is examined by type of party, however, the picture is quite different. As noted earlier, businesses constituted 80 percent of D.C. small claims plaintiffs in the National Center sample.^{**} A later small statistical study of the Small Claims Court by the District of Columbia Auditor

^{**} Ruhnka., Op. cit., pg. 42.

revealed that businesses constituted 93 percent of all plaintiffs receiving judgments.**

The data noted above suggest that business use of the small claims court is extensive. There is room for concern about the use of the Court by individuals. On a comparative basis, the National Center study of small claims courts showed that the consumer filing rates in D.C. were lower than half of that reported for several of the courts studied, but higher than a number of others. The fact that from 80 to 93 percent of small claims filings in D.C. are by businesses suggests that the D.C. Small Claims Court is substantially more available for use by businesses than by individuals.

Public awareness of the Small Claims Branch's existence relates in part to basic information sources. The D.C. telephone directory could serve to foster awareness of the D.C. Small Claims Court. Unfortunately, the listing for the small claims court is buried under: District of Columbia Government, Superior Court, Civil Division, Small Claims Branch. This telephone listing may be efficient, but in the view of the Court Study Committee, it is not fostering ease of access. A more easily discoverable listing is needed. In addition, the Small Claims telephone number should be included in the telephone directory listing of frequently called numbers.

** Auditor., Op. cit., March 1979.

General public information sources which have been used effectively in other communities to increase the public's awareness of the small claims court are many. They include:

- public school outreach programs for students in Civics and Government classes;
- guided tours of small claims court;
- placement of informational pamphlets on small claims court at widely varying locations ranging from police stations to credit unions, banks, and other commercial establishments;
- educational outreach to specific groups such as lawyers, employee counselors, social workers, police and business associations who are likely to have an opportunity to make referrals to the court or answer questions about it.

The Superior Court Small Claims Branch should be commended for its cooperation with efforts to inform the public about the small claims court. Shortly after the Superior Court was created, for example, the Washington Urban League published a guide to the court. More recently, in 1979, a local television station, Channel 9, published a pamphlet on how to use small claims courts in the Washington, D.C. area. Such efforts are important and the Court's cooperation is essential.

Recommendation: The Court Study Committee recommends that the Superior Court leadership foster awareness of and ready access to the small claims court on the part of all types of litigants, one feasible step toward that goal being telephone listings that are more noticeable and easier to find.

b. Small Claims Court Hours

A second aspect of the accessibility of the D.C. Small Claims Court involves the hours of operation and the hours trials are set and held. When a party comes to the Small Claims Branch to file a case, it will be set for trial on a specified day. The 1970 D.C. Court Reform Act, Section 11-1302, provides for small claims court sessions on every day of the year except Saturday afternoons, Sundays, and legal holidays, and on at least one evening each week. While evening and Saturday sessions are specifically provided for in the statute, in practice evening trials are scheduled only occasionally and Saturday morning trials are very infrequent. One apparent reason is that under existing court procedure, night court appearances are to be scheduled only when the parties so agree. If one party wishes an evening or Saturday trial time and the other party does not agree, the requesting party must make an additional trip to the Court, prior to the scheduled trial date, and request a judge to order an evening or Saturday trial time. It is ironic that in order to present the reasons why a court appearance in the evening or Saturday is preferable, a party must appear before a judge during the regular daily small claims calendar.⁸⁸

It is probable that very few litigants know of the availability of evening sessions. The Committee believes that if

⁸⁸ Interestingly, if the filing party wishes a small claims trial during the day, no agreement between the parties is required.

the complainant requests an evening session, the clerk should schedule it, and notify the defendant at the time of service of process. A return postcard procedure could be effectively used in this regard; the postcard could be sent to the defendant with the complaint, to be returned by the defendant if the designated trial date or session is not possible. The defendant should be given an opportunity to indicate days of the week, and time of day most convenient to the defendant. Such a return postcard procedure could also aid in the trial day calendaring. For example, those cases in which the defendant failed to return the postal reply card could be calendared in the afternoon on the assumption that those cases may be uncontested, with claims known to be contested scheduled for the morning. The administrative and other costs of the reply card should be borne by the plaintiff.

Should the parties not be able to agree on a trial time, the defendant's availability should be given preference, within reasonable limits, for the reason that payment of court judgments in small claims cases has been shown by recent studies to be more frequent in contested than in uncontested cases.⁵¹

Support for greater flexibility in calendaring procedures is found in the findings of the National Center for State Courts small claims study: availability of evening sessions

⁵¹ Ruhnka., Op. cit., p. 166.

was the second most frequently mentioned improvement in small claims court that surveyed litigants mentioned.⁵²

Recommendation: The Court Study Committee recommends that the Superior Court small claims calendaring procedures be amended to provide plaintiffs and defendants better access to court hearings at times reasonably convenient for the parties, including evenings and Saturday mornings.

Recommendation: The Court Study Committee recommends that the Superior Court adopt a return postcard procedure for determining defendants' availability for scheduled trial dates in small claims cases.

C. Small Claims Jurisdictional Ceiling

The access of plaintiffs and defendants to the D.C. Small Claims Court is also affected by the jurisdictional ceiling of the Court. Set in 1970 at \$750, the small jurisdictional ceiling has remained unchanged despite the inflationary economy of the past ten years.

Maintaining the D.C. Small Claims jurisdictional ceiling at \$750 has meant that many would-be litigants, in order to prosecute or defend smaller civil claims -- over \$750, but less than \$2,500 -- must have recourse to the Superior Court Civil Division, where an attorney is generally a necessity and where many of the special attributes of the small claims court, such as low cost, speed of disposition, and informality of rules and procedures, are absent. The formal rules of the Superior Court Civil Division may work a particular hardship

⁵² Ibid., p. 185.

on the small businessman or the individual who does not have an attorney, or cannot readily afford one.

Section 11-1321 of the 1970 D.C. Court Reform Act provides that the jurisdiction of the Superior Court Small Claims Branch is exclusive in disputes involving amounts of no more than \$750. The statute provides no method for reviewing or revising jurisdiction short of legislative action. Before the 1970 Act established \$750 as the ceiling, the limit of small claims jurisdiction was \$150.

Increasing the jurisdictional limit of the D.C. Small Claims Court would doubtless result in increase filing levels and workload in the Superior Court Small Claims Branch. The Court Study Committee conducted a small statistical study of demand and award levels in the Superior Court Civil Division for 1975, 1976, and 1977. This study revealed that nearly half of the Civil Division case filings, other than small claims and landlord and tenant, were for \$2,500 or less. With annual Civil Division case filing levels at approximately 12,000 cases, it would appear that 5,000 to 6,000 filings would be added to the Small Claims Branch if the jurisdiction were increased to \$2,500. As the preceding subsection of this report noted, however, total case filings in the Small Claims Branch decreased by almost 10,000 between 1973 and 1978.

In the view of the Court Study Committee, the administrative impact on the Court of an increased jurisdictional limit

- 91 -

is less important than the additional access that would be afforded litigants, especially pro se litigants, to the informal procedures and active court assistance of the small claims court. Existing statutes provide for periodic review and revision of Court filing fees, but there is no comparable authorization regarding jurisdictional limits. The lapse of ten years since the last small claims ceiling change illustrates the inflexibility that results from leaving such matters with the legislative body.

The Court Study Committee believes that the D.C. Court System can and should be empowered by statute to re-calculate periodically, the small claims jurisdictional ceiling.

Recommendation: The Court Study Committee recommends that Section 11-1321 of the D.C. Code be amended to increase the small claims jurisdictional ceiling from \$750 to \$2,500.

Recommendation: The Court Study Committee recommends that Section 11-1321 of the D.C. Code be amended to grant the authority to the D.C. Superior Court to raise or lower the small claims jurisdictional ceiling as it deems warranted, but no more frequently than every two years. The Committee further recommends that the D.C. Code be amended to allow the D.C. Superior Court to set filing fees and other fees in small claims cases. Modification of the small claims ceiling should be based on an accepted cost of living index such as that published by the U.S. Department of Labor.

D. Physical Facilities

A final aspect of the accessibility of the D.C. Small Claims Court to potential users is the adequacy of the Court's facilities. The opening of the new D.C. Courthouse in 1978 demonstrably improved the status of all divisions of the D.C.

Courts, including the small claims forum. The National Center for State Courts small claims study, completed before the new D.C. Courthouse opened, was critical of the appearance of "second class justice", fostered by the existing D.C. Small Claims Court physical facilities. Noting that the D.C. Small Claims Court was worst among the 15 jurisdictions surveyed, the National Center report graphically stated:

Located in a shoddy leased facility, it [the D.C. Small Claims facility] was crowded, noisy and confusing, resembling a high school cafeteria more than a courtroom. The judge was perched behind a table on a raised wood platform at the front of the room, and the traffic noise rumbling up from the street was so great on occasions that neither we [the National Center authors] nor the judge could hear what the litigants were saying."¹

It is gratifying to observe the positive improvement in the physical environment of the D.C. Small Claims Court, as compared with its previous setting.

2. The Objective of Speed

There are two aspects of the "speedy justice" goal which the Court Study Committee believes bear examination in relation to the D.C. Small Claims Court. The first concerns the lapse of time from filing to disposition of a claim; the second concerns the speed of consideration by the Court on the day of trial. The speed with which small claims cases in the D.C. Superior Court are disposed of from filing date to disposition

¹ Ruhnka, p. 99.

compares very favorably with other small claims courts.⁵⁴

In a sample of 500 D.C. small claims cases in which service of process was completed, the average elapsed time to disposition was 13 days in cases in which no continuance was granted and 48 days for cases in which continuances were granted. This compares to averages in all 15 jurisdictions surveyed of 25 days and 48 days respectively. The October 1979 Whittier College of Law Superior Court Delay Study found that over 70 percent of the small claims cases sampled were disposed of in 15 days or less.⁵⁵

The Superior Court is to be commended for facilitating the flow of small claims cases so that the majority of claims are disposed of within 14 days of filing.

The speed of the small claims process on the day of court consideration, however, leaves room for considerable improvement. When a small claims case is set for trial in the District of Columbia, the claimant and the defendant are required to be at Court at 9:00 a.m. -- the D.C. Small Claims Branch schedules, or calendars, every case to be heard on a given day for 9:00 a.m. on that day. There are several reasons for this practice, all generally relating to the high volume of business handled by the Court, the relatively small court staff, and the fact that a single judge is assigned to the Court. Calendaring

⁵⁴ Ibid., p. 118.

⁵⁵ Whittier, op. cit., Civil Division Description, p. 9.

practices by the Small Claims Branch of the D.C. Superior Court are a classic example of a situation in which the administrative convenience and internal needs of the Court are allowed to take precedence over the convenience of Court users. Of the 15 jurisdictions in the National Center study of small claims courts, only three courts - D.C. included - set at the beginning of the day all cases scheduled for trial on that day.⁵⁶

Under present procedures, all small claims cases -- often many more than 100 a day -- are the subject of a roll call at 9:00 a.m. at which time all parties must be present in order to avoid dismissal or default. The only cases not called are those that have been removed from the day's calendar for some reason such as a known defect in service of process, or a settlement agreement between the parties. All cases surviving the roll call are held for consideration by the judge, who comes on the bench at about 10:30 a.m., after all preliminary calendar calling and related tasks are concluded. The judge will then spend the rest of the day disposing of the day's small claims trial calendar. If parties are fortunate enough to be near the beginning of the list, there is the possibility that they will have been heard by noon. The majority of the contested small claims trials take place after the lunch hour, however, and some litigants in the Superior Court Small Claims

⁵⁶ Ruhnka, op. cit., pg. 124.

Branch can expect to spend most or all of the day awaiting the opportunity for a trial. If the parties are particularly unfortunate and their place on the trial list is near the bottom of the daily calendar, they may have to return to Court another day for the matter to be heard.

Inefficient daily calendaring practices in the D.C. Small Claims Court work an economic hardship on all users of the Court, but most especially on unrepresented, or pro se, litigants. Businesses, which are the biggest users of the Small Claims Branch, are ordinarily represented by retained counsel. These attorneys earn their livelihood at the Court; the fact that the calendaring practices are not efficient has little direct economic impact on them. The businesses they represent, however, do incur increased litigation costs as a result of the lengthy waiting time for trial.

The National Center for State Courts small claims research study identified a variety of calendaring procedures to facilitate the access of users to the small claims forum and to improve the efficiency of scheduling. Perhaps the simplest calendaring innovation described was the use of quarter-day or half-day trial schedules. Under that procedure, small claims trials are set for 9:00 a.m. and 1:00 p.m., in the case of a half-day calendar; or 9:00 a.m., 10:30 a.m., 1:00 p.m. and 3:00 p.m., in the case of a quarter-day calendar.¹⁷

¹⁷ Ibid., p. 153.

A different calendaring scheme which might also be considered involves specialized calendars for different types of cases, or for cases in which the issues or proof may be more than usually complex. The different filing forms now used by the court for different types of small claims provide a ready made basis for a specialized calendar system, should the Court choose to develop one.

Combining desirable aspects of various calendaring procedures is also a possibility. Any revisions in the existing D.C. small claims daily calendar should be done with the objective of reducing the waiting time of litigants.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division leadership abandon the current procedure of setting all small claims matters for Court hearing at 9:00 a.m. each day, and instead, adopt, for a one-year pilot period, different calendaring procedures such as half-day case scheduling to facilitate the efficient consideration of litigants' cases by the Court. In revising the existing calendaring procedures, the Court should consider the possible uses of the postcard reply procedure discussed previously, as well as giving known contested cases calendaring preference over likely default judgment cases.

Although prompt consideration and disposition of claims is generally a desirable goal, there is one aspect of current small claims rules that now over emphasizes speed, at the expense of even more important goals. Presently, parties are allowed three days in which to request leave to appeal decisions of the small claims Court. That time is simply too short to

afford parties an opportunity to make a carefully considered decision and to protect their appellate avenues.

Recommendation: The Court Study Committee recommends that Superior Court Small Claims Rules be amended to allow ten days for the filing of requests to appeal in small claims cases.

3. The Objectives of Low Cost and Simplicity

Economy and simplicity are also basic goals of the small claims court. These objectives are closely related to the preceding goals of efficient consideration and accessibility."¹¹

The cost to parties using the Small Claims Branch consists of court filing and associated expenses, attorney costs where an attorney is retained, and lost wages. Each of these elements of cost is important and should be considered when assessing the Court's success in providing an inexpensive forum for dispute resolution.

Individuals pursuing or defending small claims in the D.C. Superior Court need not have an attorney to represent them. Under existing court rules, however, corporations or businesses are required to appear through an authorized representative. The authorized representative in most instances is an attorney. Thus, the cost of using the D.C. Small Claims Court for business plaintiffs, or defendants, is higher than for individual plaintiffs.

¹¹ Nationally, and in D.C., the average cost of pursuing or defending a small claims case was less than \$25 at the time of the National Center study. However, these costs increased on the average to half of the claim amount where lost wages and attorneys fees were incurred. (*Ibid.*, p. 91.)

Recommendation: The Court Study Committee recommends that the existing Court Rule requiring corporations to be represented by an attorney in small claims court be modified to give the court discretion to allow small businesses to proceed pro se in the small claims forum. Inasmuch as the Small Claims Branch is designed to provide a low cost forum for resolving small money disputes, it is not appropriate to require small businesses in every instance to incur a level of expense to use this Court which individual plaintiffs and defendants do not bear.

Available research data suggests that parties tend to pursue small dollar claims pro se, but when the claim exceeds \$350, use of attorneys is much more likely. The necessity for an individual to retain an attorney in small claims court relates directly to the simplicity and intelligibility of court forms and instructions and to the role the judge plays in the consideration and disposition of the case. In one way or another, the judge must be made aware of the facts, and any evidentiary information (such as the presence of consumer defenses relating to product warranties or growing out of the extensive consumer protection statutes in the District of Columbia, or compliance with cancellation and notification clauses in installment contracts). Active participation by the judge goes far to minimize or eliminate the need for an attorney to assist the litigant in presenting the issues and the evidence.

According to the findings of the National Center small claims study, the D.C. Small Claims Branch provided less

- 99 -

assistance to litigants than most of the other courts studied.⁸⁹ While the reasons appear to be under-staffing and high volume, the lack of assistance does have the effect of increasing the cost for many litigants who, unable to obtain adequate advice from Court staff on preparing their claim - or defending it - are forced to hire an attorney. This increase in cost undermines the basic small claims court goal of inexpensiveness for litigants.

Recommendation: The Court Study Committee acknowledges the Court's considerable progress in simplifying existing Court forms. The Committee recommends further revision of the small claims forms to delete existing legalistic terms and to assist plaintiffs and defendants in understanding possible complex consumer defenses on claims filed. Further forms revision is particularly warranted given the high case volume handled by the Court and the staffing limitations, which severely limit the availability of pre-trial assistance from the Court.

Recommendation: The Court Study Committee recommends that Superior Court judicial inservice training programs recognize and convey the active role of judges in the small claims forum, and the need for continuing judicial education regarding consumer protection statutes. The Committee commends the Superior Court Judges for their active and constructive judicial role while sitting in the Small Claims Court.

The filing and other fees the small claims court charges also impact on the cost and simplicity objectives. In order to bring a claim in the D.C. Small Claim Court, a party must file the claim and must also provide the party being sued with a copy

⁸⁹ Ibid., p. 108.

- 100 -

of the claim and notice of the scheduled trial date. The small claims filing fee is \$1.00 and the notification fee - or service of process - ranges from \$1.40 for certified mail to \$7.00 for personal service on the defendant. These expenses are the essential court-related costs of bringing a small claims case to trial. In many instances, however, other expenses are also involved. For example, if a party receives an award from the Court, but is unable to obtain payment by the defendant, the claimant may, for an additional \$7.00 fee, secure a Court-executed attachment against the losing party's assets. It should be noted that small claims court rules allow reimbursement to the winning party from the losing party for filing fees and other costs.

Recommendation: The Court Study Committee recommends that parties filing small claims cases be provided informational materials explaining the most frequently encountered court-associated costs in pursuing a small claim. Such information should include the costs associated with judgment collection, with appropriate note that court costs may be recoverable.

4. The Objective of Fairness

The goal of fairness in the small claims court should be manifested to both plaintiffs and defendants at every point in the process, from initial filing to dismissal or award of judgment, and extending to the recording of judgment satisfaction. Fairness is, of course, a major objective in all areas of the Court. In small claims court ensuring the appearance and the reality of fairness are more than normally the court's

- 101 -

responsibility, since so many litigants are without lawyers to represent their interests; indeed, the Small Claims Branch is "held out" as a court in which a lawyer isn't necessary.

Recommendation: The Court Study Committee recommends that the Superior Court Small Claims Branch review existing forms and procedures to assure that assistance is available to all litigants in small claims cases.

It is the view of the Court Study Committee that, in a number of critically important areas, the D.C. Small Claims Branch is realizing the goal of fairness. These include the practice of announcing the verdict in open Court at the end of the hearing of a contested case, the practice of allowing the losing party to pay the Court-award judgment in installments; and, perhaps most important, the generally helpful and interested demeanor of the majority of judges sitting in the Small Claims Branch.

The Court Study Committee commends the Superior Court Judges for the ongoing practices of announcing small claims decisions in open court and of allowing the losing party to pay a judgment in installments.

Recommendation: The Court Study Committee recommends that the small claims summons and complaint form notify the defendant that installment payment procedures may be allowed by the Court.

In several other areas the Court Study Committee believes that the level of fairness can and should be raised. From the point of initial Court contact until trial, more assistance is available to parties filing claims than to parties against

whom claims are filed. Since defendants as well as, or more than, plaintiffs are generally unrepresented, it is particularly important that the assistance of the Court staff be available to both plaintiffs and defendants equally.

The second of the Committee's concerns about the level of fairness stems from the fact that the majority of small claims court cases are disposed of not by the judge, but by a courtroom clerk. Superior Court Rules provide that judgment not to exceed documented liquidated damages may be awarded by default if the defendant does not appear. In the majority of small claims cases, the courtroom clerk simply enters a default judgment on the basis of the nonappearance of the defendant and the plaintiff's documentation as to damages.⁶⁰

The National Center for State Courts small claims study noted that the procedure that best safeguards the defaulting defendant is to require the plaintiff to prove before a judge both the defendant's liability and the reasonableness of the damages claimed.⁶¹ The National Center study notes, however, that, even under that procedure, business claims are not generally scrutinized as closely as individual claims because of the prima facie documentation, and the proof required of the plaintiff does not include consideration of federal or state consumer protection requirements or preconditions to

⁶⁰ Op. cit., Whittier Court Delay Study, Civil Division, p. 9.

⁶¹ Op. cit., Ruhnka., p. 133.

liability.⁶² The Committee believes that active judicial involvement in the granting of default judgments is essential to insure the integrity of the Court's decision making process.

Recommendation: The Court Study Committee recommends that Small Claims default judgments be granted only by a judge after a determination of the defendant's liability and the plaintiffs damages. The judge should ascertain plaintiff compliance with applicable consumer protection statutes before awarding judgment.

A final fairness question concerns the Court's records relating to parties who pay the small claims judgments against them. According to the D.C. Auditor's 1979 Study of the Small Claims Court cited earlier, slightly less than 50 percent of the judgments awarded are paid.⁶³ The same study also found, however, some defendants made payments that the Superior Court Civil Division records failed to reflect.

While no court rule exists as to reporting back of judgment payments under existing practice the plaintiff's attorney has primary responsibility for informing the Court of payment of small claims judgments. Most plaintiffs in the Small Claims Branch are businesses, which are required to appear though an attorney; thus it would appear that the incompleteness of the Court records is attributable to faulty reporting by plaintiffs' attorneys. As noted earlier, some jurisdictions

⁶² Ibid., p. 135.

⁶³ Office of the D.C. Auditor. Satisfaction of Small Claims Judgments. April 25, 1980.

require all small claims judgments to be paid into the court registry, with the court making disbursement to the plaintiff. This procedure appears to work efficiently in the D.C. Superior Court Family Finance Office, as applied to child support orders. The Superior Court Rules Committee might consider the development of a form paid and satisfied praecipe which parties could be required to file with the Court within a reasonable period after the judgment is satisfied.

Recommendation: The Court Study Committee recommends that small claims judgments be paid through the Court Registry rather than directly between the parties. The Committee believes the Court has a responsibility to ensure that Court records accurately reflect payment.

Recommendation: The Committee further recommends that the Small Claims Branch routinely notify attorneys who actively practice before the Court regarding the importance of prompt notification to the Court as to satisfied judgments. Consideration might be given by the Court of the adoption of a rule requiring plaintiffs' attorneys to inform the Small Claims Branch through filing a paid and satisfied praecipe that judgments have been paid.

5. The Objective of Effectiveness

The effectiveness of the Small Claims Branch in resolving disputes is integrally related to the Court's success in realizing the goals, such as fairness, economy, and convenience, that have been discussed above. There, are several additional indices of effectiveness which the Committee believes also warrant consideration. For a plaintiff, the effectiveness of the small claims court depends substantially on the efficiency of the court's procedures and the extent to which any judgment

awarded is satisfied. For a defendant, the effectiveness of the small claims process is significantly affected by the defendant's access, in advance of trial, to information on the basis of which to make an informed decision whether or not to participate in the trial and, if so, to participate on an equal footing.

It must be recognized, of course, that the most efficient court procedure is powerless to create ability to pay where there is none. Furthermore, the unfortunate fact is that some merchants, in order to make a sale, are willing to enter into a payment arrangement despite questions about payment capability - or the quality of the goods, or the terms of the agreement. Many small claims problems thus reflect factors beyond the control of the court, and the court cannot reasonably be expected to resolve them.

Given that caveat, there are, nevertheless, several aspects of D.C. Small Claims Branch judgment enforcement procedures that need improvement. The National Center for State Courts suggests, as a collection satisfaction goal, 90 percent in contested cases and 60 percent in defaults. The present D.C. small claims figure is only 50 percent, on the average, for all cases. One method of increasing collection percentages in contested cases is the use of "contingent calendaring". In such a procedure, the Court would schedule a second hearing 30 days after the trial to determine whether there has been compliance with the order of the Court. If the

- 106 -

judgment has been fully satisfied before the date of the second hearing, it could be cancelled. (Were the Court to implement the Committees' recommendations regarding the contingent calendaring it would seem reasonable to only invoke the Court registry payment procedure for cases not satisfactorily handled through the second Court hearing.)

Another method of increasing the judgment satisfaction rate is for the Court to conduct, at the end of the trial, a limited written examination regarding the losing party's assets. The results of this under-oath proceeding would not be released by the Court until any appeal had been concluded, after which time the information would be made available to the judgment creditor for use in attaching the debtor's assets.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division consider using a contingent calendaring procedure and/or instituting judgment payment plans in contested cases to improve the collection phase of Small Claims Court. Asset examination of the losing party, under oath, by the judge at the end of the hearing should also be considered.

As previously noted, the largest percent of judgments entered by the D.C. small claims court are default judgments. It is the view of the Court Study Committee that an outcome that allows conciliation or adjudication between parties, both of whom are present and participating, is more likely to result in ultimate satisfaction than is a default. Accordingly, the Committee believes that the court should take every possible initiative to encourage defendants in small claims cases to

- 107 -

come to court to discuss, or contest, the claims against them. This issue was discussed above, in connection with balance of available assistance as between plaintiffs and defendants. It is reiterated here because of the Committee's strong belief that the Court will be a more effective forum if it succeeds in encouraging the participation of a greater number of defendants.

A further method of increasing the court's effectiveness is to increase the use of existing, statutorily authorized procedures for attempting to resolve small claims disputes by conciliation. Current conciliation programs and efforts, such as those of the D.C. Law Students in Court and the Landlord-Tenant project of the D.C. Bar, suggest that conciliation offers a promising alternative to formal court trials in some cases. In a recent month, for example, the law student in court program conciliated 36 cases, and reached agreement among the parties in 20. Use of the conciliation procedure by the Court is somewhat sporadic, however; it appears to be used extensively by some judges, but rarely or not at all by others.

Recommendation: The Court Study Committee recommends that the Superior Court Civil Division take steps to expand the use, on a wholly voluntary basis, of mediation and conciliation approaches for resolving small claims disputes.

The final issue relating to effectiveness that the Committee considered stems from the fact that, currently, the D.C. small claims court is authorized to consider only cases involving monetary damages. Thus, at present, a judge in small claims

court can render a judgment as to whether or not one of the parties should pay money to the other. The judge cannot order equitable relief. For example, if a dispute arises over work performed by an automobile repair shop, the Court is empowered to award, or refuse to award, money damages to the plaintiff - not to order the repair shop to make the called for repairs as an alternative to a monetary award. The availability of such alternatives might result in the satisfaction of more judgments, and might also provide an incentive for Court use by claimants who do want not a monetary adjustment but, rather, specific performance.

The difficulty with providing this Court of limited jurisdiction with such expanded powers is, of course, in determining the limits of the expansion. Since equitable powers do not lead themselves to definition by dollars and cents, the \$750 ceiling is inapplicable. Furthermore, many cases involving equitable relief involve complex legal issues which it may not be feasible to attempt to resolve through the informal means of the small claims court, especially without the aid of counsel. Nevertheless, since equitable relief may be more to the point than monetary awards in some small claims cases, the Committee considers that granting equity power would be, on balance, a benefit for the overall operation of the small claims court. The use of such powers should be limited to cases in which a money demand for no more than the jurisdictional limit of the court. That is, the granting of

equity power would not alter the jurisdictional criteria defining the Court's business, but would only amplify the remedies available to the judge.

Recommendation: The Court Study Committee recommends that small claims court judges be given the power, by legislative amendment to exercise equity powers in those cases which fall within the small claims court's jurisdiction. The Committee further recommends that the Superior Court and the District of Columbia Bar work together in creating a "bench-book" for Small Claims Branch judges, which would include detailed descriptions of the extent and the application of equity powers in small claims court.

6. The Objective of Self-Representation

There are several models in use in the D.C. small claims court and in courts in other jurisdictions for effecting the objective of self-representation. Some small claims courts ban attorneys altogether. Other courts limit stringently the attorney's role - for instance, to providing specific supplementary legal advice to the judge at the conclusion of the trial. Still other courts, D.C. included, require certain categories of plaintiffs - such as incorporated businesses - to be represented, while allowing other plaintiffs to represent themselves.

Of major importance in connection with self-representation are the role of the judge and the qualification and training of the judge for the small claims assignment. Based on both the National Center's findings and the observations of the Committee, judges in the D.C. Superior Court Small Claims

Branch play an active role in the court. The judge's participation appears to be less restrained when both parties are unrepresented than when only one party is unrepresented. Because of the necessarily active role of the small claims judge, his or her effectiveness is influenced by knowledge, training and energy (as well as temperament). A major conclusion of the National Center for State Courts small claims study was that despite the tremendous statutory development over the past ten years of consumer protection defenses and other procedural reforms, very rarely are these defenses being raised in small claims cases. The study suggested the primary obligation for properly identifying and applying such defenses in individual cases rests with the bench because of its involvement in adducing the facts and circumstances. The lack of ongoing judicial training in most small claims courts, including the District is seen by some as a major reason for the ineffectiveness of many of the existing consumer protection statutes.

The final point relating to the judiciary's role in the small claims court concerns the energy level of the judge and the daily strain of the assignment when compared to most other judicial assignments. As noted above, judges in the District of Columbia sit in the Small Claims Court for six-week periods, while the norm in other small claims courts is a week or less. The wearing effect of hearing several hundred contested cases, as well as a variety of motions, requests, and other matters,

- 111 -

inevitably diminishes the judge's capacity to play an active and effective role.

Recommendation: The Court Study Committee recommends that the Chief Judge consider substantially reducing the length of judicial assignment to the small claims court even to a period as short as a week or so.

Recommendation: The Court Study Committee recommends that any judge sitting in small claims court be given appropriate judicial training in advance.

SECTION III TRAFFIC COURT

Introduction

Few areas within the D.C. Court System have undergone more change since the passage of the 1970 D.C. Court Reform Act than the handling of traffic cases. When the D.C. Court Reform Act was enacted, traffic cases processed through the Court of General Sessions included moving and parking violations, and serious offenses with the right of jury trial - a total of more than a million traffic cases annually. As of January 1, 1979, jurisdiction over minor traffic cases was transferred to the District of Columbia's Department of Transportation. The effect of the transfer was to remove the majority of traffic violations -- those that are not subject to trial by jury -- from the Court's jurisdiction, and to establish an administrative procedure for handling them.⁶⁴ The D.C. Superior Court supported the transfer in principal.⁶⁵

From 1971 to 1978, there was a national movement to decriminalize minor traffic offenses, and to view traffic law enforcement as part of the overall transportation policy of a community rather than as part of the business of the criminal justice system.⁶⁶ The District of Columbia fell in with

⁶⁴ Council of the District of Columbia. District of Columbia Traffic Adjudication Act of 1978, (2-215).

⁶⁵ District of Columbia Courts. 1977 Annual Report. p. 28.

⁶⁶ U.S. Department of Transportation. Alcohol and Highway Safety 1978: A Review of the State of Knowledge - Summary Volume. (January 1978).

- 113 -

the prevailing trend, and the resulting administrative adjudication procedures are now in full operation. The focus of the Court Study Committee is the D.C. Court System and the implementation of the 1970 D.C. Court Reform Act, and does not encompass any detailed inquiry into non-court activities. Thus, the Committee has not examined the administrative adjudication procedures and takes no position on their effectiveness. The Committee commends the Court for its support of the development of new procedures for handling minor traffic offenses, and anticipates that the appropriate organizations will review the new administrative adjudication procedures for minor traffic offenders. In accordance with its mandate to study the Court, the Committee has directed its attention to the handling of the serious traffic offenses over which the Court has retained jurisdiction.

Although jury triable traffic offenses are subject to the Court's jurisdiction by the very nature of the offense -- driving under the influence of alcohol, hit and run, reckless driving or driving after license revocation or suspension -- the court proceeding is but one level of adjudication of the traffic violation. To most defendants in these cases the most serious consequence of arrest is the revocation or suspension of the driving license. The court has no jurisdiction or discretionary powers in this important decision. The granting, suspension or revocation of driving licenses is the exclusive prerogative of the Bureau of Motor Vehicles Services of the

D.C. Department of Transportation. At some early point following arrest defendants should be informed of the nature of the Superior Court's jurisdiction and that of the D.C. Motor Vehicle Bureau.

A. Jury Triable Traffic Offenses

During the period from 1965 to 1975, the monthly caseload of all jury demandable traffic offenses -- driving under the influence of alcohol, driving after revocation or suspension of license, hit and run, and reckless driving -- remained stable at about 250 cases a month. In 1975, the volume of driving under the influence of alcohol (DUI) cases began to increase dramatically. In 1970 there were 48 DUI arrests in the District of Columbia. By 1978 the number had risen to 4,4000.⁶⁷ With the increased enforcement of driving under the influence of alcohol (DUI) cases by the Metropolitan Police Department, the Court's workload increased to almost 450 cases a month, with the DUI cases constituting almost two-thirds, or 375, of the major traffic cases heard monthly. This trend continues to the present. Since DUI cases constitute the largest category in the Court's traffic workload, the Committee has directed most of its attention to this area. In addition, since a significant number of otherwise law-abiding citizens are involved in traffic court cases, the Committee has been particularly concerned about problems of procedure

⁶⁷ Metropolitan Police Department. Traffic Analysis Report for 1978. (June, 1979). p. 113.

- 115 -

and decorum in that court which adversely affect the public's view of the D.C. Superior Court, the Bar, and the general administration of justice. For many citizens, an appearance in traffic court will be their first and perhaps their only contact with the Superior Court. The Committee believes it is essential for the image, reputation, and integrity of the Court that the voting and taxpaying public involved in traffic court proceedings perceive it as a place of fairness, decorum, and seriousness of purpose.

DUI cases come to Court following an arrest by the Metropolitan Police Department and a decision to prosecute by the City's Corporation Counsel. In the majority of cases, the defendant is released on citation by the police when arrested, with a Court appearance set approximately two weeks after the arrest. The arrest forms in DUI cases provide little information for the defendant about what to expect in Court, where or how to retain an attorney if the defendant wants one, what diversion programs exist, or other relevant matters.

In March 1979, the D.C. Corporation Counsel instituted a voluntary First Offender Alcohol Diversion Program for persons having a level of alcohol in the blood, at the time of the arrest, of .17 or less. The eligibility criterion has recently been raised to .20 blood alcohol content, the effect of which will be to qualify for inclusion in the program upwards of thirty percent of those coming into the D.C. Traffic Court.

- 116 -

Most persons who are eligible do enter the program.⁶⁶ Similar programs in some other jurisdictions require that, upon acceptance into the diversion program, the defendant execute a jury trial waiver form, so that in the event the defendant fails to complete the diversion program, Court disposition of the pending charge may be expedited. The Committee commends the D.C. Office of the Corporation Counsel for instituting, and recently expanding, the first offender alcohol diversion program. The Committee also notes, however, that further broadening of the diversion program seems feasible even within existing resource constraints.

Recommendation: The Court Study Committee recommends that the Corporation Counsel consider substantially expanding the alcohol diversion program on a pilot basis, to determine whether more defendants would benefit from participation.

Most persons charged with driving under the influence of alcohol come to Court for their initial appearance without a lawyer. Personal observations by members of the Committee and interview comments received suggest a basis for serious concern about the manner in which such defendants "retain" counsel after arriving in the courthouse. Members of this Committee have observed that frequently, as a DUI defendant enters the courthouse, he is approached by one or more persons who inquire

⁶⁶ Alprin, Geoff, Deputy Corporation Counsel, Criminal Division. Personal interview, January 23, 1980.

whether the defendant needs assistance. Because there is no screening or supervision of the persons "volunteering" assistance, nor any attempt to provide the defendant with information concerning available legal assistance, the Committee is concerned that uninitiated defendants may be poorly served by the "legal advice" proffered at the courthouse door.

Many other alternatives exist for providing DUI defendants access to legal services. For instance, the Court might arrange with the various bar association lawyer referral and information services for direct telephone lines at the main courthouse public information counter. Another alternative might be to have an information specialist in the traffic court, as has been done in the landlord/tenant court.

In the view of the Court Study Committee, a critical problem in the present and past handling of DUI cases is the lack of any advance information for the defendant on such matters as Court procedures, the availability of C.J.A. counsel if the defendant is indigent, phone listings for legal service programs, information on existing alcohol diversion programs, and explanation of the role of the Division of Motor Vehicles in the DUI area. The Committee believes that the anxiety and lack of knowledge of persons coming into court on DUI cases could be largely overcome through availability, at the time of arrest, of such information. Federal grant support through the Highway Safety Program may be possible for such a project.

- 118 -

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division leadership support prompt development of informational materials for use by those coming to Traffic Court.

Another of the Committee's concerns about Court handling of DUI cases, is that the judge generally lacks information about the defendant on the basis of which to devise a disposition tailored to the defendant's and the community's best interests. Especially in view of the facts that more than half of all D.C. highway fatalities each year are drunk-driver-related, and that many DUI defendants appear in the traffic court over and over again, it is essential that the Court have adequate information before disposing of such cases.⁶⁹

Traffic Court, like the other statutory courts, is a very wearing judicial assignment. The large numbers of matters handled, the continuous stream of activity within the courtroom itself, and the general lack of information and expert assistance on the part of parties appearing in this court all contribute to the strain on the judge.

Superior Court judges sit in Traffic Court from four to six weeks, on the average. Some assignments have been for three months or longer.

Recommendation: The Court Study Committee recommends that consideration be given to shortening the length of assignment of judges in Traffic Court from the present six week average duration.

⁶⁹ Metropolitan Police Department, 1978 Traffic Analysis Report. p. 104. District of Columbia Commission on Judicial Disabilities and Tenure. Annual Report, 1979. p. B-14.

- 119 -

Finally, the Committee is concerned about the paucity of meaningful sanctions available to the Court in disposing of DUI cases. Courts in some jurisdictions employ a wide variety of dispositional approaches for such cases, such as restricting operation of motor vehicles to daylight hours, imposing stiff fines, and requiring performance of community service.⁷⁸

Recommendation: The Court Study Committee recommends that the Superior Court Criminal Division leadership explore the identification and inclusion in the Division Benchbook of varying DUI dispositional alternatives to assist judges in Traffic Court. Inasmuch as in the District of Columbia, the power of licensing rests exclusively with the Bureau of Motor Vehicles it might be fruitful for that Bureau to explore dispositional alternatives where appropriate to revocation or suspension of driving licenses.

⁷⁸ Mouldon, John, Alcohol Coordinator, U.S. Department of Transportation. Personal interview, March 13, 1980.

Minority Report To Section I - Landlord-Tenant Court

COMMENTS OF GERALD M. GREEN
A MEMBER OF THE D.C. BAR COURT SYSTEM STUDY COMMITTEE

Although the Study Committee sitting as a committee of the whole, has significantly amended the recommendations contained in the initial draft report prepared by its Landlord and Tenant Sub-Committee, I believe the final report fails to appropriately address many important issues. As the members of the drafting sub-committee were drawn exclusively from the ranks of attorneys as well as other individuals whose previous experience was almost exclusively limited to representation of tenants and tenants' problems, the report's failure to reflect many of the concerns raised by members of the Bar who represent property owners, is not surprising. Nevertheless, while the report remains seriously flawed, many of the recommendations and comments are excellent and deserving of careful consideration.

At the philosophical level, take into consideration the fact that most of the recommended procedural changes will impose additional expenses and costs upon property owners. While the increased expenses may be modest or even negligible when considered individually, the cumulative increased costs associated with all of the recommendations, when viewed as a package, is substantial.

After discussion, a consensus of the Study Committee supported the proposition that increased costs and expenses can be passed on by property owners to their tenants. Accordingly,

Appendix A (cont'd)

the concept of a "Summary Proceeding" could be reasonably subordinated to extraordinary "Due Process" considerations.

Careful and unbiased analyses do not support the foregoing conclusions. D.C. Rent Control legislation limits annual increases in monthly rental payments to a cap of 10% or the increase in the cost of living, as measured by the C.P.I. This legislation also specifies that rent adjustments can only be imposed on an annual basis. The property owner therefore absorbs all increases in higher costs, until the single annual increase takes place. While it is true that the adjustment in rent reflects increases in expenses incurred during the preceeding 12 months, there is still a lag in the owner's ability to recover his/her costs.

More importantly, the report's recommendations further enhance the perception that the District of Columbia is not a profitable location for housing investment. The majority report ignores the regulatory climate in this jurisdiction. While lawyers may find it convenient to approach the recommendations solely from the "Due Process" point of view, this is not the only consideration which prompts investment in residential rental property. The lack of balance in the report is therefore most unfortunate.

Additional comments generally follow the sequence set forth in the report. They are not numbered, as the final

Appendix A (cont'd)

draft of the report was not available at the time these comments were prepared.

A. Regular evening and Saturday sessions impose an enormous burden upon the clerk's office as well as counsel representing property owners. Multiple Landlord and Tenant Court locations, in the various neighborhoods of the city, will geometrically increase the burden. This branch of the Superior Court processes more than 100,000 cases each year. While it may be facially attractive to provide extensive service at night, on weekends and in neighborhood locations, the inevitable logistical problems will substantially affect the quality of service available to all litigants.

B. The recommended screening process for all cases similarly ignores the logistical burdens imposed by an annual case load in excess of 100,000. Implementation of the recommendation would require an enormous staff at a time when the Court's financial resources are being reduced due to budgetary constraints, rather than expanded. The recommendation also ignores the logistical problems of processing the 250-300 tenants who appear in Court each day. It further requires Court staff to engage in the practice of law and assumes that all Pro Se tenants are incapable of articulating in any way, their desire to raise a defense. The explanation of a litigant's rights and obligations is the responsibility of competent, and aggressive counsel, rather than a Court functionary

Appendix A (cont'd)

who will almost inevitably view his/her primary responsibility to move the cases.

The proposal is ill conceived, not completely, thought out, and impractical. The alternative approach included in the report over the objection of the members of the Landlord and Tenant Sub-Committee, would address many of the "Due Process" concerns in a procedure which could be implemented immediately and at modest cost.

C. Elevating the Interview and Judgment Clerk to the quasi judicial level is unnecessary. Once again the report's recommendations in this area seek to transfer the obligation of aggressive, competent counsel to a Court functionary. Contrary to the report's implications, the current Interview and Judgment Clerk does not act as a "rubber stamp" for plaintiffs and their respective counsel. The job description requires diligent inquiry into the important issues of a tenant's comprehensive understanding of the proposed agreement, as well as the tenant's voluntary actions in signing the agreement. Numerous proposed judgment praecipies are rejected each and every day that the Court is in session.

D. Requiring diligent inquiry into all possible defenses which may be available to a tenant, before entry of judgment, ignores the time considerations that such an inquiry would take. It also ignores the fact that tenants are not

Appendix A (cont'd)

compensated for the time they spend in Court and often must take annual leave, or pay for child care when they are summoned to Court. As many tenants are simply in need of additional time, and an installment plan, to bring past due rent current, the proposal unfairly burdens many of the individuals it seeks to protect.

E. Assigning Housing Inspectors to the Court is yet another facially attractive suggestion which cannot survive careful analysis. The financial constraints facing the District of Columbia would inevitably reduce the number of housing inspectors available for the regular, and important case load, which that department faces each day. This reduction would impact on the number of licensing inspections which could be performed, as well as the number of emergency complaint inspections. This in effect, robs the city of one important form of code enforcement, in favor of a program which is again ill conceived.

The proposal, if implemented, could also be abused by litigants and the Court itself. Assuming a very limited number of inspectors are assigned to the Court, requests for continuances to permit an inspection are inevitable. Further delay, in a procedure which already makes a mockery of the concept of "Summary Proceedings" will inevitably lead to the loss of additional rental housing units, in a jurisdiction which desperately needs an increased number of such units.

Persons InterviewedSECTION I - Landlord-Tenant

1. Henry Alston, Housing Advisor
Center City Community Corporation
group meeting July 25, 1979
2. Honorable James A. Belson, Associate Judge
D.C. Superior Court
personal interview October 6, 1978
group meeting July 25, 1979
3. William Bodwitch, Esq.
phone interview May 18, 1979
4. Kirk Bowdin, Supervisor
U.S. Marshals Service
personal interview August 13, 1979
5. Josephine Bulkley, staff member
A.B.A. National Housing Justice Project
group meeting July 25, 1979
6. Willie E. Cook, Jr., Executive Director
D.C. Neighborhood Legal Services Program
group meeting July 25, 1979
7. Renee DeVigne, staff member
D.C. Councilwoman Willie J. Hardy
group meeting July 25, 1979
8. Peter George Djinis, Esq.
Rules Advisor, Superior Court
group meeting July 25, 1979
9. Rick Eisen
Metropolitan Washington Planning and Housing Assoc.
group meeting July 25, 1979
10. Leslie E. Gerwin, Esq.
telephone interview August 6, 1979
11. Myles Glasgow, Esq.
University Legal Services
group meeting July 25, 1979
12. Shelly Goldfarb, Esq.
group meeting July 25, 1979

Appendix B (cont'd)

13. Gerald Green, Esq.
personal interview May 22, 1979
group meeting July 25, 1979
14. Thomas Hammond, Clerk
Civil Division
personal interview November 15, 1978
group meeting July 25, 1979
15. Ralph Jordan, Interview and Judgment Clerk
D.C. Superior Court
telephone interview April 28, 1981
16. Dorothy Kennison, Administrator
D.C. Rental Accommodations Office
personal interview February 22, 1979
group interview July 25, 1979
17. Janel Labella, Esq.
Legal Aid Society
group meeting July 25, 1979
18. Helen Marek, Staff Director
Citizens' Advisory Committee
D.C. Bar
group meeting July 25, 1979
19. Jack Martin, Supervisor
Landlord and Tenant Branch
D.C. Superior Court
group meeting July 25, 1979
20. Honorable Hilda Mason, Member
D.C. Council
group meeting July 25, 1979
21. Marie Nahikian, Special Assistant to the Director
Department of Housing and Community Development
group meeting July 25, 1979
22. John O'Neill, Executive Vice-President
Apartment and Building Association
group meeting July 25, 1979
23. Evelyn Onwuachi, Education Coordinator
Citywide Housing Foundation
group interview July 25, 1979

- 127 -

Appendix B (cont'd)

24. Joseph Schneider, Esq.
Landlord Lawyers Board
group meeting March, 1979
25. Paula D. Scott, Esq.
D.C. Neighborhood Legal Services Program
group meeting July 25, 1979
26. Randall Scott, Director
A.B.A. National Housing Justice Project
telephone interview June 15, 1979
27. Ernest Withers
Citizens' Advisory Committee
D.C. Bar
group interview July 25, 1979
28. Nancy Wynstra, Director
Superior Court Planning and Research Division
telephone interview September 25, 1978

Appendix B - Persons InterviewedSection II & III - Small Claims & Traffic

1. Geoff Alprin, Deputy Corporation Counsel
Criminal Division
Office of the Corporation Counsel
personal interview, January 23, 1980
2. Frederic, B. Bean, Chief Deputy Clerk
Criminal Division, D.C. Superior Court
telephone interview, March 23, 1979, April 6, 1979
3. John Brophy, Public Parking Administrator
Department of Transportation, Washington, D.C.
4. Robert E. Gaskins, Deputy Clerk, D.C. & Traffic Branch
Criminal Division, D.C. Superior Court
telephone interview, March 23, 1979
5. Fred Grabowsky, Esq.
D.C. Bar Counsel
personal interview, February 20, 1980

Appendix B (cont'd)

6. Dr. Burton Grace, Director
Total Health & Education Counseling Center
Washington, D.C.
personal interview, March 21, 1980
7. Thomas Hammond
Chief Deputy Clerk
Civil Division, D.C. Superior Court
personal interview, October 30, 1979
telephone interview, March 9 and 26, 1979
8. Charles Henry
Deputy Clerk
Civil Division, D.C. Superior Court
personal interview, October 30, 1979
telephone interview, June 1, 1979
9. Honorable John R. Hess
Associate Judge
D.C. Superior Court
personal interview, March 4, 1980
telephone interview, March 27, 1980
10. Captain Wayne Layfield
Head, Traffic Division, Metro Police Department
Washington, D.C.
personal interview, February 28, 1980
11. Joel Lipson
Assistant Director, Data Processing Division
D.C. Superior Court
telephone interview, March 23, 1979
12. Kit Lunnie, Administrative Office of the State Courts
Augusta, Maine
telephone interview, April 20, 1979
13. John S. March, Deputy Clerk, Serious Misdemeanor Branch
Criminal Division, D.C. Superior court
telephone interview, June 14, 1979, July 17, 1979,
July 25, 1979
14. James B. McWilliams, Director
Bureau of Traffic Adjudication, D.C. D.O.T.
Washington, D.C.
telephone interview, March 17, 1979

Appendix B (cont'd)

15. John Mouldon, Alcohol Coordinator
National Highway Traffic Safety Administration
U.S. Department of Transportation
personal interview, March 13, 1980
16. Jane Rosenberg, Esq.
Project Director, Small Claims Court
Action Center
New York Public Interest Research Group, Inc.
personal interview, December 19, 1978
telephone interview, February 15, 1979
17. Hy Rubin, Esq.
8404 Georgia Avenue
Silver Spring, Maryland 20910
telephone interview, May 22, 1979
18. Julian Schonter, Assistant Deputy Clerk
Civil Division, D.C. Superior Court
personal interview, March 16, 1979
19. Russell Smith, Staff Researcher
Office of the Auditor of the District of Columbia
personal interview, March 16, 1979
telephone interview, April 16, 1979
20. Robert Soomon
The Credit Bureau, Washington, D.C.
telephone interview, May 2, 1979
21. Robert Stone, Judicial Systems Analyst
National Highway Traffic Safety Administrator
U.S. Department of Transportation
personal interview, March 13, 1980
22. Steven Weller, Staff Researcher
National Center for State Courts
Williamsburg, Virginia
personal interviews, October 30, 1978 and
April 3, 1979

BibliographySECTION I - Landlord-Tenant

- "Abuse of Process: Sewer Service". Columbia Law School News, March 1967.
- Auerbach, Jerold S. "The Two-Track Justice System." The Nation, April 5, 1980.
- F.W. Berens Sales Co., Inc. v. McKinney (310 A.2d 601). District of Columbia Court of Appeals. 1973.
- Brown v. Southall (D.C. App. 237 A. 2d 834). District of Columbia Court of Appeals. 1968.
- Bradbrook, A.J., "Role of the Judiciary in Reforming Landlord-Tenant Law", Melbourne University Law Review Vol. 10:459-80, Summer, 1976.
- Committee on Civil Legal Services, D.C. Judicial Conference. 1980 Report. Washington, D.C., May
- D.C. City Council Landlord-Tenant Advisory Committee. Report on Landlord-Tenant Court Reorganization. Washington, D.C., February 21, 1973
- D.C. Judicial Conference Committee on Civil Legal Services. Report of the Committee on Civil Legal Services of the Judicial Conference of the District of Columbia. Washington, D.C., May 15, 1980.
- D.C. Superior Court, "Comparative Summary of New Case Filings", Annual Report, Table 9, p. 41. Washington, D.C., 1979.
- D.C. Superior Court, Monthly Statistical Reports - Civil Division. Washington, D.C. January-December 1977.
- Ebel, David M. Landlord-Tenant Mediation Project in Colorado, Colorado Bar Association and the Commission on Community Relations for City and County of Denver, Denver, Colo. January 1979.
- Dube, Diane. Final Report of the Landlord-Tenant Dispute Resolution Project. Landlord and Tenant Committee of the Hennepin County (Minnesota) Bar Association, Minneapolis, Minn. June 9, 1980.
- Edwards v. Habib (227 A. 2d 388), District of Columbia Court of Appeals. 1967.

Appendix C (cont'd)

- Gerwin, Leslie. "Evolution of Landlord-Tenant Law in D.C." Part I, p. 457; Part II, p. 641. Catholic University Law Review, 1977.
- Greene, Harold, H., Chief Judge. "Proposal for the Establishment of a D.C. Landlord-Tenant Agency." D.C. Bar Journal, January-February 1971.
- Greene, Harold H., Chief Judge. Unpublished memorandum in re report of the Special Landlord-Tenant Committee of the Board of Judges of the D.C. Superior Court. March 5, 1973.
- Javins v. First National Realty Co. (138 U.S. App. D.C. 369), United States Court of Appeals, District of Columbia Circuit, 1970.
- Joint Committee on Judicial Administration in the District of Columbia. Annual Report of the District of Columbia Courts, 1976, 1977, 1978, 1979. Washington, D.C.
- "Legal Services and Landlord-Tenant Litigation: A Critical Analysis." Yale Law Journal Vol. 82:1495. Yale Law School, New Haven, Conn. 1973.
- McNamara, Robert M., Jr. "The District of Columbia Landlord and Tenant Court: An Obsolete Structure in Need of Reform." Catholic University Law Review Vol. 23:275, Winter 1973.
- "Modern Legislation Metropolitan Court, Minuscle Results: A Study of Detroit's Landlord-Tenant Court." University of Michigan Journal of Law Reform, 1973.
- National Housing Justice and Field Assistance Program: Quarterly Information Bulletin Issue One, December 1978, and Issue Two, March 1979. Division of Public Service Activities, American Bar Association, Washington, D.C.
- Neighborhood Legal Services Program. Report and Recommendations to Chief Judge Greene Concerning Reform of Landlord-Tenant Court. Washington, D.C. 1972.
- Philadelphia Tenant Action Group. Community Education Program on Tenants Rights, September 29, 1978. Also Testimony on Housing Code Enforcement and the Department of Licenses and Inspections. February 25, 1978. Tenant Action Group, Philadelphia, Pa.

Appendix C (cont'd)

"Problems of Default and Notification Procedures", Washington Post January 29 and 30, 1973.

Reynolds, J.L. and M.J. Robinson. "Statutory Covenants of Fitness and Repair: Social Legislation and the Judges." Moderh Law Review Vol. 37:377-98, July 1974, and Vol. 39:43-54, January 1976.

Rice, P. An Initial Survey of Information Relating to Representation in the Landlord and Tenant Court Branch of the Civil Division of the D.C. Superior Court. The American University Law Institute, Washington, D.C., June 1978.

Robinson v. Diamond Housing Corporation (463 F.2d 853), United States Court of Appeals District of Columbia Circuit, April 3, 1972.

Rutzick, M. C. and R. L. Huffman, "New York City Housing Court: Trial and Error in Housing Code Enforcement." New York University Law Review Vol. 50:738-97. New York, New York, October 1975.

Vasaly, Thomas. "A Report of the Dispute Resolution Project of the Landlord and Tenant Committee." Minnesota Bar Journal, Minneapolis, Minn., November-December 1980.

Whittier College School of Law. Descriptive Report of the District of Columbia Superior Court Caseflow, Washington, D.C., October 1979.

Winchester Management Corp. v. Staten (361 A.2d 187) District of Columbia Court of Appeals, July 14, 1976.

Salas and Schneider, "Evaluating the Dade County Citizen Dispute Settlement Program." Judicature Vol. 63:173+, 1980.

Shepherd, D.I., J.A. Roehl, and R.F. Cook. National Evaluation of the Neighborhood Justice Centers, Field Test. National Institute of Justice, Washington, D.C. U.S.G.P.O., 1980.

Appendix C - Bibliography (cont'd)

SECTION II & III - Small Claims & Traffic

ABA Commission on Standards for Judicial Administration, Standards Relating to Trial Courts, the ABA, Chicago, Ill., February, 1976. p.136

Appendix C (cont'd)

- Alcohol and Highway Safety 1978: A Review of the State of knowledge - Summary Volume, Department of Transportation, Highway Administration, January 1978.
- Alcohol Safety Program Progress, U.S. Department of Transportation, Highway Administration, Washington D.C., Volume I and Volume II, June 1979.
- Alcoholics Anonymous, Alcoholics Anonymous World Services, Inc., New York City, 1955.
- Annual Report, District of Columbia Courts, 1977 and 1978.
- Congressional Record, 93rd Congress. 2nd Session, Volume 120, page 1, Statement by Senator Magnusson on S2928, January 31, 1974.
- Continuing Legal Education (CLE), meeting on May 16, 1979, How to Collect a Judgment.
- Council of the District of Columbia, "District of Columbia Traffic Adjudication Act of 1978 (2-215)", July 1978.
- Court Management Study, Report to the Committee on the District of Columbia, United States Senate, 91st Congress, 2nd Session, May 1978.
- Descriptive Report of the District of Columbia Superior Court Case Flows, Whittier College School of Law, October 1979.
- Domanskis, A., "Small Claims Court: An Overview and Recommendations," 9 Jrnl. Law Ref. 590 (Spring 1976).
- Effective Management Of Drinking Drivers, T.H.E. Counseling Centers, Washington, D.C., 1978.
- Estrine, A., "Small Claims Court in the District of Columbia: A Prescriptive Analysis," unpublished research paper done under direction of John Kramer, Esq.
- Evaluation and System Description of ASAP Judicial Systems, U.S. Department of Transportation, Highway Administration, Washington, D.C. July 1978.
- Executive Summary of Five Alcohol Safety Action Projects' Judicial Systems, U.S. Department of Transportation, Highway Administration, Washington, D.C., June 1978.

Appendix C (cont'd)

Freeman, M., Statement in Behalf of the Washington Urban League, Hearing on S2928 Before the Commerce Committee, Subcommittee on Consumers, and Committee on the Judiciary, Subcommittee on Representation of Citizen's Interests, in the Senate, March 27, 1974.

Freeman, M., and Jason Newman, "Powers of the Chief Judge and Congress to Institute Change in Small Claims Court," unpublished draft.

Greene, Harold J., Chief Judge of the D.C. Superior Court, "Memorandum to the Judges, "November 16, 1977.

Improved Parking and Traffic Enforcement in the District of Columbia, April 1977, Metropolitan Police Department, Office of the Corporation Counsel, D.C. Department of Transportation.

Justification for the FY 1980 Budget, Government of the District of Columbia, Volume 3, Public Safety and Justice.

Kramer, John, and William Rold, "Recommendations for Reform of the Small Claims Court in D.C.," preliminary draft.

Murphy, T., "District of Columbia Small Claims Branch -- The Forgotten Court, : 34:2 D.C.B.J. 14 (February 1967).

Poe, Alison, "Why Landlords and Tenants Fault Small Claims Court," Center for Public Representation, Madison, Wisconsin, July 1979, pages 4-7.

Pound, E., "Administration of Justice in the Modern City," 26 H.L.R. 302 (1913).

Proceedings of the 1979 NCA Alcohol and Traffic Safety Session, U.S. Department of Transportation, Highway Administration, Washington, D.C., April 30 - May 2, 1979.

Report on Administrative Adjudication of Traffic Adjudication Act, Committee on the Judiciary Council of the District of Columbia, May 24, 1978.

Results of National Alcohol Safety Action Projects, U.S. Department of Transportation, Highway Administration, Washington, D.C., May 1979.

Rosenberg, Jane, "Final Report of the Small Claims Court Action Center, "New York Public Interest Research Group Inc. (Summer, 1978).

- 135 -

Ruhnka, John C., and Steven Weller, Small Claims Court: A National Examination, National Center for State Courts, 1978.

Status of Study on Collection of Judgments in the Small Claims and Conciliation Branch, Office of the District of Columbia Auditor, March 16, 1979.

Traffic Analysis Report for 1978, Metropolitan Police Department, Government of the District of Columbia, June 1979.

Committee Report

FIDUCIARY, PROBATE AND TAX REPORT
OF THE
D.C. COURT SYSTEM STUDY COMMITTEE

THE DISTRICT OF COLUMBIA BAR

September 11, 1979

Charles A. Horsky
Committee Chairman

Samuel F. Harahan,
Staff Director

(745)

TABLE OF CONTENTS
Fiduciary, Probate and Tax Report

	<u>Page</u>
INTRODUCTION	1
SECTION I Jurisdictional Matters -- Transfer of Trusts	3
SECTION II Judicial Assignments and Workload	6
A. Fiduciary and Probate	6
B. Tax	9
SECTION III Administrative Consolidation	11
A. Auditing of Fiduciary and Probate Accounts	11
B. Fiduciary and Probate Matters Generally	15
SECTION IV Probate Philosophy and Attorney Performance	15
A. Attorney Performance	16
B. Court Procedures and Operations	19
C. Probate Reform	21
1. A Cursory Review of All Accounts by the Register of Wills	21
2. The Small Estates Procedure	24
a. The Jurisdictional Limit	24
b. Expand to Testate Estates	24
3. Proof of Will	25
4. Service of Process	26

SECTION V	Court Rule Changes	27
A.	Jurisdiction Between the Civil Division and Probate Division -- Civil Rule 12-1(a)(5)	27
B.	Approval of Accounts	28
1.	Probate Division Rule 14(d).	28
2.	Civil Division Rule 305(b)	29
C.	Pro Se Corporate Representation - Tax Division Rule 3(b)	30
SECTION VI	Emphasis on Informational Services and the Tools of Fiduciary, Probate and Tax Practice	31
A.	Informational Pamphlets	31
B.	Development of Form Pleadings	32
C.	Development of Accounting Standards	32
D.	Index to Cases	33
E.	Development of Legislative History for Use by the Tax Division	33
SECTION VII	Related Matters -- The D.C. Inheritance Tax Office	34
A.	The Filing and Payment Dates	34
B.	Observance of Probate Division Decisions	35
* * * *		
Appendix A:	Persons Interviewed	36
Appendix B:	Bibliography	39

FIDUCIARY, PROBATE AND TAX REPORT

RECOMMENDATIONS

PAGE

1. Recommendation: The Court Study Committee recommends that the U.S. Congress enact a statute transferring jurisdiction over all trust cases which were pending before the U.S. District Court on August 1, 1972, to the D.C. Superior Court and encourages the leadership of those courts to support this initiative. 5
2. Recommendation: Pending Congressional action as described above, the Court Study Committee recommends that the U.S. District Court adopt a rule similar to existing Superior Court Rule 305(j), which eliminates the requirement for annual accountings by a trustee, even in a pending matter, where otherwise appropriate. 5
3. Recommendation: The Court Study Committee recommends that the judicial assignment to the fiduciary and probate area be considered a primary assignment for one judge. It is anticipated that that judge will be available for supplemental assignment in other areas of the Court's work. In no event should the judge assigned to the fiduciary and probate area also be assigned to a fixed calendar court, or to a civil or criminal court where the cases are particularly demanding of the judge's time. 9
4. Recommendation: The Court Study Committee recommends that a second judge on the Court be assigned the task of substituting for the fiduciary judge when he or she is unavailable for any reason. The supporting judge should handle fiduciary and probate cases at other times during the year as frequently as is necessary to remain familiar with the Court's operations in those areas. 9
5. Recommendation: The Court Study Committee recommends that the Tax Division remain a supplemental judicial assignment and that the primary assignment of that judge be in such other areas as the Family Division, Civil II cases and areas other than fixed calendar courts. It is also noted that the fiduciary and probate area appears compatible with the tax assignment for judges at this time. 11

6. Recommendation: The Court Study Committee recommends that the Superior Court monitor the Tax Division case filings closely in 1979 and 1980 to determine whether the Tax Division assignment should be reclassified as a primary rather than a supplemental assignment. The Court Study Committee does not believe that the present workload justifies that action at this time.

11

7. Recommendation: The Court Study Committee recommends the addition of an attorney-advisor or law clerk position assigned wholly to the Tax Division to assist in handling the case load of the Tax Division judge.

11

8. Recommendation: The Court Study Committee recommends that the Superior Court merge the regular audit staffs of the Auditor-Master and of the Register of Wills office under a consolidated Probate Division; D.C. Code § 11-1724 should be amended to delete subsection (1), which makes audit of fiduciary accounts a function of the Auditor-Master. The combined audit staff should be located as close as possible physically to the offices of the other court staff performing fiduciary and probate activities. Attention must be given to the grade classifications and salary levels of the employees of the two groups in order to effect the merger in a manner which is not disruptive to employee morale and Court operations. Under the proposed consolidation, the Auditor-Master and deputy remain to devote their major efforts to serving as masters in a broad range of cases for the entire Superior Court and to provide specialized assistance by reference from the Probate Division in particularly complex accounting matters.

14

9. Recommendation: The Court Study Committee recommends that all matters of account and/or reference submitted to the Auditor-Master from the U.S. District Court be eliminated.

15

10. Recommendation: The Court Study Committee recommends that the Probate Division of the D.C. Superior Court adopt stricter policies to deal with problems in the areas of fiduciary and attorney performance. The Probate Division, in its discretion, should more readily report to the Bar Counsel any attorney who is removed as fiduciary by the Court from an individual estate, who gives improper advice which results in the removal of a fiduciary, who causes unreasonable delay in the administration of an estate, or who is otherwise negligent, incompetent, or dishonest. The Committee further recommends that the Board of Professional Responsibility and the Bar Counsel act vigorously in investigating and acting on all cases of a probate and fiduciary nature brought to its attention by the Court or other parties. In instances of misappropriation of funds, it should be clear that restitution of assets does not absolve the attorney; disciplinary procedures and actions of the bar should function more effectively in these instances. The Court should exercise its discretion to deny compensation from the estate, in whole or in part, to a fiduciary who is removed by the Court and to any attorney whose improper advice results in removal of a fiduciary.

18

11. Recommendation: The Court Study Committee recommends that the Court review its present policies, practices and procedures to assure that the role of the Court in estate administration is consistent with a more purely oversight role.

20

12. Recommendation: The Court Study Committee strongly supports the adoption of a revised statute on estate administration in the District of Columbia and urges the active support of the Court leadership and of the appropriate Bar Divisions to that end. The Committee recommends that the issues discussed below be covered in any new statute.

21

13. Recommendation: The Court Study Committee recommends that the Register of Wills do a cursory review of all estate administration cases and require a full audit only when necessary to protect the public, the fiduciary, or the attorney.

24

14. Recommendation: The Court Study Committee recommends that the jurisdictional limit on small estates be significantly increased. Such an increase will necessitate a review of the level of the family allowance as well. 24
15. Recommendation: The Court Study Committee recommends that testamentary estates within the statutory limit for small estates be permitted to use the same expeditious procedures as intestate estates. 25
16. Recommendation: The Court Study Committee recommends that the statute regarding proof of wills be amended to permit a testamentary instrument that appears valid on its face to be presumed valid unless its validity is questioned by a proper party. 26
17. Recommendation: The Court Study Committee recommends that the requirements for service of process in this area be revised by statute in a manner that is realistic under all of the circumstances. 27
18. Recommendation: The Court Study Committee recommends that the words "or other fiduciary matters" be deleted from Superior Court Civil Rule 12-1(a)(5) to eliminate confusion. To provide guidance to practitioners, the Court should further amend its rules to delineate those types of quasi-fiduciary matters which are to be brought in the Civil Division. 27
19. Recommendation: The Court Study Committee recommends that the fiduciary be excused from a formal Court audit of accountings filed with the Court if authorized by written waivers signed by all interested persons and filed with the Register of Wills, and if the Court is satisfied, in its discretion, that the rights of all interested persons appear to have been protected. Within the context of Rule 14(d) the Court should develop consent forms written in plain English. The consent forms should inform interested persons that they should themselves have received a copy of the inventory and accounting for review. They

should be informed of the issues involved in the choice of a cursory review or a full audit. The form should indicate clearly the manner and time for any objection. Once the consent forms are received, the Court should allow the approval of accounts without formal audit under the circumstances set forth in Rule 14(d). In the exercise of his discretion under Rule 14(d), the Register of Wills may take into account such matters as are noted in the general discussion. The Register of Wills should be required to notify the fiduciary and the attorney in any estate in which the account is accompanied by consents as to the reasons the estate will be formally audited.

29

20. Recommendation: The Court Study Committee recommends that Civil Rule 305(b) be amended to eliminate the requirement that assets be physically inspected annually if the fiduciary is fully covered by bond. The Court should consider elimination of this rule in its entirety. 30
21. Recommendation: The Court Study Committee recommends that the Court re-examine Tax Division Rule 3(b), which permits pro se representation by corporations, to determine whether that rule is in the best interest of the parties and the Court. 31
22. Recommendation: The Court Study Committee recommends that the Superior Court prepare and have available at the appropriate office for distribution pamphlets which set forth in plain English the duties and responsibilities of a conservator, administrator, or other fiduciary and which describe the role of the Court in the administration of estates. The appropriate division of the bar should assist the Court with this effort. These documents should be reviewed and revised periodically to ensure accuracy. The Court should also consider whether such a brochure for the public would be useful in the tax area. 32
23. Recommendation: The Court Study Committee recommends that the Superior Court develop forms written in plain English for the standard filings in the probate area. These would include initially the petition for probate, the inventory form, and accounting forms. 32

24. Recommendation: The Court Study Committee recommends that the Court review its accounting standards with respect to fiduciaries with the view toward developing a single set of standards for all fiduciaries. The bar should, of course, assist in this effort. Special reference should be made to the Report of the Committee on National Fiduciary Accounting Standards published through the efforts of the Section of Real Property, Probate and Trust Law of the American Bar Association. 33
25. Recommendation: The Court Study Committee recommends that the Superior Court establish an index of those opinions of the Court in the probate and tax areas which address issues of law and that these indexes be kept current and be made available to the public. Again, the appropriate division of the bar should assist in this effort. Perhaps a specialized private publisher might be interested in this project and/or an area law school could be enlisted to assist in this effort. 33
26. Recommendation: The Court Study Committee recommends that the bar assist the Superior Court in assembling complete legislative histories of the pertinent taxing and other statutes which are regularly before the Tax Division for interpretation in individual cases. 34
27. Recommendation: The Court Study Committee recommends that the District of Columbia change the dates for filing and payment of District of Columbia inheritance taxes to nine months after the date of death, consistent with the requirement for the federal estate tax. 35
28. Recommendation: The Court Study Committee recommends that the Superior Court leadership, the D.C. Department of Finance and Revenue, and appropriate bar leadership act jointly to determine how to eliminate the problem engendered by the D.C. Inheritance Tax office's refusal to abide by orders of the Probate Division of the Superior Court. 35

INTRODUCTION

The Report which follows constitutes the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the fiduciary, probate and tax areas. The Court Study Committee's basic purpose has been to determine how the 1970 D.C. Court Reform and Criminal Procedures Act has worked in actual practice and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. Court System leadership, and to the Community. The D.C. Court System Study Committee is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, as President of the D.C. Bar. Throughout this Report this ad hoc committee will be referred to as the Court Study Committee.

The principal investigative and analytic work leading to the development of the Court Study Committee's findings and recommendations in the fiduciary, probate and tax areas was done by the Subcommittee of the same name. Subcommittee members responsible for the initial drafting included Doris D. Blazek, Irving B. Yochelson, and Irvin B. Nathan, Chair.

In the fiduciary, probate and tax areas, it is the conclusion of the Court Study Committee that the reorganization of the District of Columbia Courts by the 1970 D.C. Court Reform and Criminal Procedures Act has resulted in an improvement in the services provided the public. While the Court Study Committee sets forth a number of recommendations for further improvement, we find that in these substantive areas

- 2 -

the D.C. Superior Court has been meeting its responsibility in a relatively effective and efficient manner.

The Court Study Committee bases its conclusions and recommendations on extensive interviews that were conducted over a period of months with Superior Court Judges Haywood and Penn, the Register of Wills and a number of the Court's administrative personnel, private attorneys specializing in the three areas of concern, the D.C. Government's Office of Corporation Counsel, and clients whose interests are affected by these courts. The Court Study Committee is deeply appreciative of the generous assistance and candor accorded it by all whom were interviewed. The Court Study Committee has also considered the statistical information set forth in the D.C. Court's Annual Reports as released by the Joint Committee on Judicial Administration in the District of Columbia.

The Court Study Committee was impressed with the caliber of the D.C. Superior Court personnel interviewed as well as with their interest in exploring additional means of improving the functioning of the Court for the public and the bar. The Court is to be commended for the high regard with which its judges and administrative personnel in these areas are held within the community.

This report is divided into seven general topic areas: (i) jurisdictional matters, (ii) judicial assignments and workload, (iii) administrative consolidation, (iv) probate philosophy and attorney performance, (v) court rule changes,

- 3 -

(vi) emphasis on informational services and the tools of practice, and (vii) related matters. Within each topic area, general findings and recommendations are offered. A few of the recommendations require legislative action by either the Council of the District of Columbia or the U.S. Congress. The majority of the Court Study Committee's findings and recommendations do not require statutory action.

SECTION I JURISDICTIONAL MATTERS -- TRANSFER OF TRUSTS

Prior to the 1970 D.C. Court Reform Act, all fiduciary matters in the District of Columbia were handled by the United States District Court for the District of Columbia. The internal case assignment procedure used by the U.S. District Court at that time allotted fiduciary matters to the judge on motions duty, an assignment which rotated approximately every month. As a consequence, there were little continuity and some inconsistency in the District Court's treatment of fiduciary matters prior to the 1970 statute transferring responsibility for those cases to the D.C. Superior Court.

On August 1, 1972, responsibility for all fiduciary matters, other than probate cases and the one exception discussed below, was transferred to the D.C. Superior Court.

- 4 -

In all, approximately 1250 trust cases were transferred to the Superior Court at that time. On August 1, 1973, all of the probate cases were transferred to the D.C. Superior Court.

Under D.C. Code §§ 11-501 and 11-921, the D.C. Superior Court assumed jurisdiction over all matters then pending in the U.S. District Court pertaining to probate, guardianships, conservatorships, committeeships, gifts to minors and the hospitalization of the mentally ill. However, under D.C. Code § 11-501, the U.S. District Court retained jurisdiction over pending cases which were not comprehended by D.C. Code § 11-921 and which fell within the U.S. District Court's inherent equity powers. As a result, approximately 300 trust cases then pending in the U.S. District Court remained under its jurisdiction and to the date of this report have not been transferred to the D.C. Superior Court.

With the bulk of D.C. trusts under court supervision now being handled by the D.C. Superior Court, the fact that an estimated 300 trusts were left in the U.S. District Court appears to stem from an omission in the 1970 Congressional legislation reorganizing the District of Columbia courts. The intent of the D.C. Court Reform Act was to transfer to the D.C. Superior Court all fiduciary cases then pending in the U.S. District Court. However, the 1970 D.C. Court Reform statute excluded from that transfer, by omission, trusts over which the U.S. District Court had already assumed jurisdiction. All trust actions filed in the District of Columbia

- 5 -

since the effective date of the Act come under the jurisdiction of the D.C. Superior Court.

This dual jurisdiction over trust cases has created a variety of problems for both courts and those having fiduciary business before the U.S. District and D.C. Superior Courts. For example, The U.S. District Court and the D.C. Superior Court have different rules regarding the filing of annual accountings in trust cases. Superior Court Civil Rule 305(j) excuses trustees from filing annual accountings under certain circumstances; the U.S. District Court has no such rule. The Auditor-Master, who is an employee of the D.C. Superior Court, reviews accounts for the U.S. District Court and must maintain a set of records for each court as a result of this split. The U.S. District Court reviews and considers adoption of rules in the fiduciary area to govern these few trust cases before it. There appears to be no substantive reason to continue this split of jurisdiction over trust cases.

Recommendation: The Court Study Committee recommends that the U.S. Congress enact a statute transferring jurisdiction over all trust cases which were pending before the U.S. District Court on August 1, 1972, to the D.C. Superior Court and encourages the leadership of those courts to support this initiative.

Recommendation: Pending Congressional action as described above, the Court Study Committee recommends that the U.S. District Court adopt a rule similar to existing Superior Court Rule 305(j), which eliminates the requirement for annual accountings by a trustee, even in a pending matter, where otherwise appropriate.

SECTION II JUDICIAL ASSIGNMENTS AND WORKLOAD

A. Fiduciary and Probate

After the transfer of jurisdiction over probate matters to the D.C. Superior Court took place on August 1, 1973, the Chief Judge established a fiduciary judge assignment. This action consolidated under one judge all fiduciary matters under that Court's jurisdiction. The fiduciary judge is responsible for all matters involving probate of estates, construction of wills, conservatorships, committee ships, guardianships, appointment and removal of trustees, and similar matters. Since at that time the caseload for the fiduciary judge was not sufficient to warrant the full time and attention of a judge, the fiduciary judge assignment was a supplemental assignment. Thus, any judge with the fiduciary assignment also has a concurrent primary assignment of a different nature -- e.g., to the Criminal Division, the Family Division, etc.

The decision to have a single judicial focal point within the D.C. Superior Court for all fiduciary matters has clearly resulted in a greater degree of consistency and certainty in decision-making in this area than was the case under the U.S. District Court. However, the supplementary nature of the fiduciary assignment no longer appears appropriate.

Each year there are approximately 2500 new cases filed in the Probate Division and approximately 1500 active

- 7 -

fiduciary cases, most of which are conservatorships involving the administration of the estates of incapacitated persons. Each day there are both probate and fiduciary matters that must be considered and disposed of by the D.C. Superior Court. In the probate area, hearings must be held in such matters as will contests, orders nisi for the sale of real property, and proposed removal of fiduciaries for cause. In addition, there are frequent matters to be considered dealing with the disposition of the property of an estate. In each conservatorship, the Court must appoint a guardian ad litem to prepare a preliminary assessment; appoint a conservator; authorize the appropriation of funds; monitor the accounting of the conservators; supervise the administration of the conservatorship; and take remedial action with respect to any delinquent conservators.

While matters before the Probate Division are often uncontested in nature, at times extensive hearings are required. It is anticipated, as well, that the recent case of Andrade v. Jackson, 107 Wash. Law Repr. 957 (June 1, 1979), which held that the Probate Division exercises the general jurisdiction of the D.C. Superior Court, will result in an increase in the number and variety of disputed issues which come before that Division. Practitioners have consistently experienced long delays in the issuance of orders in contested matters in the fiduciary and probate area.

Two other aspects regarding the fiduciary judge's assignment as a supplemental one should be noted. Because the assignment is supplementary to the judge's primary assignment, the scheduling and disposition of fiduciary matters must be handled between the responsibilities the judge carries in the primary area. Experience suggests that some primary judicial assignment areas are less compatible with the orderly functioning of the fiduciary area than others. Fixed calendar courts and complex civil and criminal assignments are particularly incompatible with the proper functioning of the fiduciary judge's supplemental duties.

Additionally, concern centers on the lack of a judicial back-up to the fiduciary judge in the event of absence due to sickness, vacation, in-service education, or other reason. At present, the Superior Court has only one judge handling this subject area. Reflective of the dedication of the judges who carry this responsibility -- currently Judge Margaret Haywood, earlier Judge Theodore Newman -- the fiduciary judge even comes to the Court while on vacation to sign orders and handle fiduciary business. It would appear to be preferable for the D.C. Superior Court and for all concerned to have one or two other judges on the Court fully cognizant of its functioning in the probate and fiduciary areas. Only in this way can the Court be assured of not placing an undue burden on any single judge and of ensuring that in all situations the Court can continue to provide the same judicially

- 9 -

experienced fiduciary decisions it has since the D.C. Superior Court was created.

Recommendation: The Court Study Committee recommends that the judicial assignment to the fiduciary and probate area be considered a primary assignment for one judge. It is anticipated that that judge will be available for supplemental assignment in other areas of the Court's work. In no event should the judge assigned to the fiduciary and probate area also be assigned to a fixed calendar court, or to a civil or criminal court where the cases are particularly demanding of the judge's time.

Recommendation: The Court Study Committee recommends that a second judge on the Court be assigned the task of substituting for the fiduciary judge when he or she is unavailable for any reason. The supporting judge should handle fiduciary and probate cases at other times during the year as frequently as is necessary to remain familiar with the Court's operations in those areas.

B. Tax

The Tax Division of the D.C. Superior Court exercises exclusive jurisdiction over civil and criminal tax matters in the District of Columbia. This exclusive jurisdiction has been exercised since February 1, 1971, the effective date of the 1970 D.C. Court Reform Act.

From 1972 to 1975 the number of civil and criminal tax filings before the D.C. Superior Court was relatively constant, as were the dispositions by the Court during these four years. In 1976 there was a dramatic increase in filings in the criminal area, from 64 to 562 filings; there was only a slightly lower filing level in 1977. Filings in the civil area have been relatively stable for the past six years, at a

- 10 -

level of about 75 case filings per year. However, it is projected that the workload in the civil area will more than double in 1978 and 1979. This will result from the District Government's new procedure of re-assessing all real property annually. Relief from such assessments must first be sought before the D.C. Board of Equalization and Review, and filings there reflect a substantial increase, some of which will ultimately reach the Court.

Assignment to the Tax Division is made by the Chief Judge on the basis of interest and qualification. For the past several years, one judge has handled the majority of tax matters coming before the D.C. Superior Court as a supplemental assignment.

The Tax Division judge has to handle his "supplemental" duties as tax judge as well as carry a primary judicial assignment within the D.C. Superior Court. Certain primary judicial assignment areas are less compatible with fulfillment of the tax assignment than others. In particular, fixed calendar courts and complex civil and criminal trials do not appear compatible with the smooth functioning of the Tax Division. Practitioners described the negative aspects of tax practice before the Court in terms of partially completed trials carrying over four to seven separate dates before completion. That occurred when the tax judge had a demanding primary assignment.

- 11 -

Practitioners in this area also spoke of lengthy periods between tax case filings and court disposition. The complex nature of the tax jurisdiction requires substantial legal research and study before decisions are rendered. At present, the law clerk of the Tax Division judge handles legal research and related duties in the area of the judge's primary judicial assignment. This has meant that the judge has had to carry the primary responsibility for legal research in the tax area. This is not viewed as an efficient use of judge's time.

Recommendation: The Court Study Committee recommends that the Tax Division remain a supplemental judicial assignment and that the primary assignment of that judge be in such other areas as the Family Division, Civil II cases and areas other than fixed calendar courts. It is also noted that the fiduciary and probate area appears compatible with the tax assignment for judges at this time.

Recommendation: The Court Study Committee recommends that the Superior Court monitor the Tax Division case filings closely in 1979 and 1980 to determine whether the Tax Division assignment should be reclassified as a primary rather than a supplemental assignment. The Court Study Committee does not believe that the present workload justifies that action at this time.

Recommendation: The Court Study Committee recommends the addition of an attorney-advisor or law clerk position assigned wholly to the Tax Division to assist in handling the case load of the Tax Division judge.

SECTION III ADMINISTRATIVE CONSOLIDATION

A. Auditing of Fiduciary and Probate Accounts

The D.C. Court Reform Act, in transferring various "local" governmental judicial functions to the D.C. Superior

- 12 -

Court, provided for continuance of the offices of the Auditor-Master and of the Register of Wills generally as they had been structured in the U.S. District Court. The Auditor-Master presently serves five principal functions: (i) to conduct audits and prepare audit reports to the Court on all fiduciary accounts (exclusive of probate and guardianship accounts) in the D.C. Superior Court, primarily conservatorships and trusts; (ii) to conduct annual and final audits of all trust accounts remaining in the U.S. District Court; (iii) to hold hearings and render accountings when necessary in connection with D.C. Superior Court proceedings, including complicated probate matters; (iv) to execute orders of reference referred by the D.C. Superior Court in a broad range of civil cases; and (v) to handle matters of reference from judges of the U.S. District Court. The activities of the Auditor-Master do not generally involve the handling of accounts of decedent's estates or guardianships. That auditing responsibility is performed by the Probate Division of the D.C. Superior Court, i.e., by the office of the Register of Wills.

There appears to be a backlog in the audits under the responsibility of the Auditor-Master's office. Recent statistics from the Auditor-Master indicate that of the 490 pending cases, 31% has been pending for more than six months and some accountings have been on file in the Auditor-Master's office for more than eighteen months without the annual audit having been completed. This delay causes serious problems, for

- 13 -

fiduciaries may discover long after the fact that certain expenditures or accounting practices will not be approved by the D.C. Superior Court's auditors and such disallowance will affect subsequent annual accounts which may already have been filed.

The backlog in the Auditor-Master's office appears to result from the multiplicity of functions which that office has been required to perform, as well as from a reduction in the accounting staff. The loss of key personnel, reduction in overall size of the staff, and the growing backlog is said to have eroded office morale, further impeding the performance of that office. The acceptance of work from the U.S. District Court also contributes to this backlog. In the view of the Court Study Committee, it is inappropriate for the Auditor-Master of the D.C. Superior Court to continue to serve the U.S. District Court in matters of reference and account.

Probate account audits by the Register of Wills office are now performed on a current basis. While some years ago there was a serious backlog of accounts to be audited, at present probate accounts are routinely audited within 30 days after the account statement is filed with the Register of Wills.

The division of audit responsibility between the two D.C. Superior Court offices appears to be based more on historical circumstance than on logic or administrative efficiency. D.C. Code § 11-1724 does, however, provide that the "Auditor-

- 14 -

Master" shall audit and state fiduciary accounts. Interviews with institutional trust officers and practicing attorneys revealed a commonly held view of the overall similarities in tasks each Court office performs in auditing their respective accounts. By all appearances, the audit work of both the Register of Wills staff and the Auditor-Master's office requires considerable substantive knowledge of the fiduciary and probate areas and the functions performed by each is, indeed, very similar. The Court Study Committee understands that the Court classifies auditors from each office in the same civil service categories. However, there appears to be considerable imbalance in the grade classification, pay levels and salary scales between the Register of Wills auditors and the auditors in the Auditor-Master's office.

The Court Study Committee found no compelling reason for the D.C. Superior Court to retain two separate account auditing staffs with highly similar functions. The fact that one of those audit staffs has been experiencing delays in completing audit while accounts filed with the other office are audited currently also argues against separate staffs.

Recommendation: The Court Study Committee recommends that the Superior Court merge the regular audit staffs of the Auditor-Master and of the Register of Wills office under a consolidated Probate Division; D.C. Code § 11-1724 should be amended to delete subsection (1), which makes audit of fiduciary accounts a function of the Auditor-Master. The combined audit staff should be located as close as possible physically to the offices of the other court staff performing fiduciary and probate activities. Attention must be given to the grade classifications and salary levels of the employees of the two groups in order

- 15 -

to effect the merger in a manner which is not disruptive to employee morale and Court operations. Under the proposed consolidation, the Auditor-Master and deputy remain to devote their major efforts to serving as masters in a broad range of cases for the entire Superior Court and to provide specialized assistance by reference from the Probate Division in particularly complex accounting matters.

Recommendation: The Court Study Committee recommends that all matters of account and/or reference submitted to the Auditor-Master from the U.S. District Court be eliminated.

B. Fiduciary and Probate Matters Generally

The Committee, in the course of its work, was concerned that the D.C. Superior Court had fiduciary matters scattered within two sections of the Civil Division, in the separate Probate Division and in the Auditor-Master's office. The Superior Court leadership also recognized this problem and effective February 20, 1979, transferred the office of the fiduciary clerk from the Civil Division to the Probate Division. The Committee applauds this action by the Court and believes it will contribute to improvements in service in this area.

SECTION IV PROBATE PHILOSOPHY AND ATTORNEY PERFORMANCE

The most difficult policy issues examined by the Committee in the fiduciary and probate areas concerned: (i) the proper level of Court participation and involvement in estate administration and the role of private counsel in the probate area and (ii) the past, present and probable future performance of some attorneys in matters of probate administration. The Committee, in interviewing probate practitioners,

- 16 -

heard frequent complaints that the existing legislation, under which the Court functions and the operational perspectives of the Court, as reflected in its rules and procedures, interject the Court too heavily in the administration of decedents' estates in the District of Columbia. It has been equally if not more forcefully demonstrated to the Committee, in written communication from the Register of Wills and the Probate Judge of the Superior Court, that the Court faces a serious, continuing problem of negligent, dilatory, incompetent, and even dishonest actions by a small but not insignificant number of lawyers and fiduciaries who practice in this area.

A. Attorney Performance

Under existing probate legislation the Superior Court exercises its important stewardship role over estates and trusts primarily through review and approval of accounts and pleadings filed in individual estates by fiduciaries and attorneys. The Register of Wills reported to the Committee that twenty-five percent (25%) of accounts filed with his office are not filed in a timely manner. Even after several additional written notices are sent to the attorney and the fiduciary and further telephone calls made by the Office of the Register of Wills, fully five percent (5%) of such cases must be scheduled for formal removal proceedings before the accounting is filed. In a recent four month period forty (40) proceedings for removal were actually required to be heard by the Court and such hearings resulted in removal in twelve (12)

cases. While these statistics suggest that at least seventy-five percent (75%) of the cases before the Court in the probate area are handled in a competent and proper fashion and that only thirty-six (36) removals (less than one and one-half percent of all pending fiduciaries) might occur in a year's time, the Court Study Committee nonetheless believes that the figures reveal an important problem which must be addressed by the Court and the bar.

From the Register of Wills it was further learned that, whether or not accounts were timely filed, many accounts contained serious errors which potentially affected the ultimate share due and owing to various beneficiaries.

To a certain extent, the Court appears to have been reluctant, for a variety of reasons, to deal with the problem of attorney competence. One such reason is the serious question of whether the bar has effectively dealt with similar matters referred to it in the past. Also, the Register of Wills has stated that it is often less time consuming and less costly to attempt to prod the attorney and fiduciary into compliance and to attempt to correct the errors in this manner. Removal of the fiduciary necessitates the scheduling of Court hearings which increase the costs and the delay in the administration of the estate.

The Committee believes that the Probate Division should report to the Bar Counsel any attorney who is removed by the Court as fiduciary of an estate or who gives improper

advice which results in the removal of a fiduciary or who causes unreasonable delay in the administration of an estate. Additionally, the Court Study Committee believes the Court should routinely advise the Bar Counsel of negligent, dilatory, incompetent, and dishonest conduct by attorneys before the Court in the probate area, and that the Bar Counsel should take appropriate action in every case.

The Court Study Committee was advised in the course of examining the attorney performance area of probate that it is the Court's policy to allow compensation to a removed fiduciary and his or her attorney for work performed prior to removal. The Committee questions the appropriateness of this existing policy and suggests as an alternate policy that the Court exercise its discretion to deny compensation from the estate, in whole or in part, to a fiduciary who is removed by the Court and/or to his or her attorney.

The Court Study Committee observes that the matter of attorney performance in individual cases is an important issue and one which extends far beyond the probate, fiduciary and tax subject areas. As further reports of the Committee are prepared on other subject areas of Court operations, it is expected that the Committee will more comprehensively address this important element in the administration of justice in the District of Columbia.

Recommendation: The Court Study Committee recommends that the Probate Division of the D.C. Superior Court adopt stricter policies to deal with problems in the areas of fiduciary and

attorney performance. The Probate Division, in its discretion, should more readily report to the Bar Counsel any attorney who is removed as fiduciary by the Court from an individual estate, who gives improper advice which results in the removal of a fiduciary, who causes unreasonable delay in the administration of an estate, or who is otherwise negligent, incompetent, or dishonest. The Committee further recommends that the Board of Professional Responsibility and the Bar Counsel act vigorously in investigating and acting on all cases of a probate and fiduciary nature brought to its attention by the Court or other parties. In instances of misappropriation of funds, it should be clear that restitution of assets does not absolve the attorney; disciplinary procedures and actions of the bar should function more effectively in these instances. The Court should exercise its discretion to deny compensation from the estate, in whole or in part, to a fiduciary who is removed by the Court and to any attorney whose improper advice results in removal of a fiduciary.

B. Court Procedures and Operations

While the above discussion covers some of the practical concerns and problems the Superior Court experiences in discharging its responsibilities in the fiduciary and probate areas it is also useful to review briefly some examples of Court practices and procedures which, in the view of the Committee, assert the Court too far into normal estate administration.

The Probate Division of the Superior Court currently has in existence a Rule stating that accounts filed with the Court need not receive a formal audit if the consents of all beneficiaries are filed with the account. To date, though counsel have fully complied with the provisions of the existing Probate Rule 14(d), the Register of Wills office conducts

- 20 -

a complete and thorough audit of every account filed. (Refer to Section V.B. of this Report for further discussion of this problem.)

A further example of how present Court operations interject the Probate Division too far into estate administration concerns the appraisal function. Currently the Register of Wills maintains on his staff three appraisers whose job it is to place a value on the tangible personal property and other assets subject to administration in a decedent's estate. In many jurisdictions, the value of these assets is determined by the fiduciary, with the assistance of private, independent appraisers. The Court Study Committee questions whether this is a proper function for the Court and whether it is a wise use of the limited resources of the Court.

It is the Court Study Committee's view that the primary responsibility for individual estate administration in the District of Columbia rests with the private counsel and fiduciary acting on behalf of the individual estate, compensated through private means. In the view of the Committee, the Court could perform the proper oversight role in fiduciary and probate matters without the present level of rigid and strict intervention provided by present statutes and internal Court procedures.

Recommendation: The Court Study Committee recommends that the Court review its present policies, practices and procedures to assure that the role of the Court in estate administration is consistent with a more purely oversight role.

C. Probate Reform

Several bills were introduced before the D.C. Council in 1978 and 1979 designed to effect major reforms in the procedures for estate administration. The Court Study Committee endorsed the type of reforms offered by these new bills. Since the issuance of its September 11, 1979, report an act reforming probate procedures in the District of Columbia passed the D.C. Council and was signed by the Mayor, effective for persons dying after December 31, 1980.

While it was not the function of this Committee to review and comment on the pending probate legislation before the Council, several issues, outlined below, were recommended and covered by new legislation in this area.

Recommendation: The Court Study Committee strongly supports the adoption of a revised statute on estate administration in the District of Columbia and urges the active support of the Court leadership and of the appropriate Bar Divisions to that end. The Committee recommends that the issues discussed below be covered in any new statute.

1. A Cursory Review of All Accounts by The Register of Wills

Substantial problems in the performance of some attorneys have been documented in written materials prepared the Register of Wills for the use of the Court Study Committee. At present a great number of errors in accounts are found through Court review and are corrected only as a result Court supervision. (See Section IV.A. for further discussion of this area.)

- 22 -

One piece of proposed legislation before the Council of the District of Columbia provided that if beneficiaries waive, a fiduciary and his or her attorney will be permitted to administer an estate without the necessity of filing any account with the Court, of undergoing any review, or even of sending a copy of any accounting to the interested parties. At the present time, fiduciaries who elect to use the special bond procedure (which can only be utilized with the consent of all residuary beneficiaries of the estate) accept personal liability for all debts and just claims against the decedent, all damages which may be recovered against him or her as fiduciary, and all legacies bequeathed by the Will, if any, even when such debts, claims, damages and legacies exceed the assets of the estate. The proposed legislation omitted this personal financial liability of the fiduciary in excess of estate assets but did not eliminate the fiduciary's liability for his or her wrongdoing. Probate reform is necessary in the District of Columbia. However, especially in view of the comments about some attorneys' performance by the Probate Judge and the Register of Wills, the Committee questions any reform effort that would eliminate entirely all independent Court review of fiduciary performance in this highly technical area of the law.

At present, approximately sixty percent (60%) of all estate administration cases are filed with the Register of Wills office, and each is meticulously audited by the Court.

The other forty percent (40%) of the estates are processed as special bond cases which, under present laws, receive no audit or review of any kind by the Court.

Many fiduciaries may now elect to use special bond procedures because this makes possible speedier settlement of the estate and allows fiduciaries to avoid many archaic and outmoded provisions which now encumber estate administration. The pending legislation removes both the archaic and outmoded provisions which delay estate administration and also the provisions for immediate settlement of the estate. The benefits attached to the present special bond procedure would no longer exist in their present form.

For the protection of all parties, all estates should be subject to a reasonable review with reasonable documentation to protect both fiduciaries and the citizenry from mistakes in this very technical field. This review should follow the general format discussed in a subsequent section of this Report (Section V.B.1. Approval of Accounts -- Probate Division Rule 14(d)). That type of review is intended to apply to cases that do not follow special bond procedures, and it should be extended to all estate administration cases. This is a middle course between the present extremes of a full audit in sixty percent (60%) of the cases and no review whatsoever in forty percent (40%) of the cases. The Court should perform a cursory review of each account, and, if all appears to be in proper form, enter an order stating the account is

approved without full audit. A formal audit should only be required if the Register of Wills can show good cause for the need for it.

Recommendation: The Court Study Committee recommends that the Register of Wills do a cursory review of all estate administration cases and require a full audit only when necessary to protect the public, the fiduciary, or the attorney.

2. The Small Estates Procedure

a. The Jurisdictional Limit

The jurisdictional limit on those decedent's estates which may avail themselves of the simplified procedure for small estates was raised in 1971 from \$500 to \$2,500. This increase made it possible for a larger number of estates to be handled in a prompt and economical manner. Inflation which has occurred since 1971 and information received in interviews suggest that the statutory ceiling of \$2,500 no longer appears relevant to the needs of the public for simplified court administration in small size estates.

Recommendation: The Court Study Committee recommends that the jurisdictional limit on small estates be significantly increased. Such an increase will necessitate a review of the level of the family allowance as well.

b. Expand to Testate Estates

By statute, the small estates procedure is available to testate estates only if a spouse or minor child survives. Therefore, if a decedent with no spouse or minor child leaves a will and an estate under the statutory limit, the estate

must be processed through the more formalized procedures required of larger estates. An estate of this size should not be excluded from the simplified small estates procedures simply because a will is present. The simplified procedure for small estates is available to intestate estates, whether or not a spouse or minor child survives.

Recommendation: The Court Study Committee recommends that testamentary estates within the statutory limit for small estates be permitted to use the same expeditious procedures as intestate estates.

3. Proof of Will

Sections 18-504 and 18-505 of the D.C. Code require that before a will may be admitted to probate in the District of Columbia, all witnesses must be located and must prove their signatures on the will and the circumstances of execution at the Court or in some other manner. This requirement frequently results in considerable delay in the admission of wills to probate. Practitioners and bank trust officers in the District report that it is this type of delay in the administration of estates in the District of Columbia that engenders the most frustration and resentment of beneficiaries toward the administrative process in this jurisdiction and toward the fiduciary. The delay in admission of the will to probate means no one is in a position to pay debts or take other action with respect to the deceased person's assets. Contrary to this most burdensome procedure, in the neighboring jurisdiction of Maryland a will that is filed is deemed to be

- 26 -

valid if it appears valid on its face. That presumption is always subject to challenge by any interested party. In the neighboring jurisdiction of Virginia, it is necessary to produce only one witness before a will is admitted to probate. The need for the Court to be certain of the validity of a purported testamentary instrument would not seem to require the efforts currently mandated by the D.C. statute.

Recommendation: The Court Study Committee recommends that the statute regarding proof of wills be amended to permit a testamentary instrument that appears valid on its face to be presumed valid unless its validity is questioned by a proper party.

4. Service of Process

Delay in the probate of wills is frequently caused also by the requirements for service. Sections 18-501 and 18-502 of the D.C. Code require that various papers in connection with the probate of a will be personally served or returned "not to be found". Ten days is allowed to effect that service. This service of process is often carried out by the U.S. Marshal's Service and fully one-third of the papers are not delivered within the ten day period. This results in a duplication of effort by the Court's personnel since the service must be re-issued.

Those sections and section 18-503 also require that the U.S. Marshal attempt service of process in certain probate cases on "unknown heirs at law." This service, by definition, cannot be effected.

Recommendation: The Court Study Committee recommends that the requirements for service of process in this area be revised by statute in a manner that is realistic under all of the circumstances.

SECTION V COURT RULE CHANGES

A. Jurisdiction Between the Civil Division and Probate Division -- Civil Rule 12-1(a)(5)

One recurring problem in the fiduciary area appears to center on the division of jurisdiction over quasi-fiduciary matters between the Civil Division and the Probate Division. This problem will be eliminated in large part by the Court's recent move to shift the office of the fiduciary clerk from the Civil Division to the Probate Division. However, confusion will remain because certain matters which may appear fiduciary in nature do not come within the purview of the fiduciary office. This confusion is fostered by the breadth of the language in Superior Court Civil Rule 12-1(a)(5). That rule provides that "all motions, petitions, rules or orders to show cause and other requests for relief in connection with committeeships, conservatorships, trusteeships or other fiduciary matters, shall be heard by the judge assigned to fiduciary matters" (emphasis added).

Recommendation: The Court Study Committee recommends that the words "or other fiduciary matters" be deleted from Superior Court Civil Rule 12-1(a)(5) to eliminate confusion. To provide guidance to practitioners, the Court should further amend its rules to delineate those types of quasifiduciary matters which are to be brought in the Civil Division.

B. Approval of Accounts

1. Probate Division Rule 14(d)

The existing Superior Court Probate Rules provide a procedure for the approval of accounts without formal Court audit if all beneficiaries consent. Rule 14(d) offers the Register of Wills broad latitude in deciding whether to submit an account, under the Rule, to the Court for approval without formal audit. The Committee favors a procedure in which the account filed by the fiduciary is excused from formal Court audit if authorized by waivers signed by all interested parties and filed with the Register of Wills and if the Court is satisfied that the rights of all interested persons have been protected.

In this connection the Court should develop a consent form written in plain English which clearly informs a beneficiary of his or her right to receive an accounting and full audit of the estate administration.

The Court should employ a list of basic requirements to determine whether an account, accompanied by the consents of all beneficiaries, would be approved without full audit. Such internal review list might include: (1) a copy of the receipted funeral bill; (2) certificate of payment of D.C. Inheritance Tax; (3) review of commissions and fees claimed; (4) evidence of payment of all claims and debts filed of record; and (5) review of schedule of distribution as it relates to the Will or schedule for intestate distribution.

The Court may also take a cursory look at the account, and if all appears in proper form, the Court should enter an order stating the account is approved without full audit.

Recommendation: The Court Study Committee recommends that the fiduciary be excused from a formal Court audit of accountings filed with the Court if authorized by written waivers signed by all interested persons and filed with the Register of Wills, and if the Court is satisfied, in its discretion, that the rights of all interested persons appear to have been protected. Within the context of Rule 14(d) the Court should develop consent forms written in plain English. The consent forms should inform interested persons that they should themselves have received a copy of the inventory and accounting for review. They should be informed of the issues involved in the choice of a cursory review or a full audit. The form should indicate clearly the manner and time for any objection. Once the consent forms are received, the Court should allow the approval of accounts without formal audit under the circumstances set forth in Rule 14(d). In the exercise of his discretion under Rule 14(d), the Register of Wills may take into account such matters as are noted in the general discussion. The Register of Wills should be required to notify the fiduciary and the attorney in any estate in which the account is accompanied by consents as to the reasons the estate will be formally audited.

2. Civil Division Rule 305(b)

Under the present Civil Rule 305(b), an auditor must physically inspect every security upon annual presentation of a fiduciary account. This rule means that the auditors must physically examine the stock certificates or other tangible evidence of the security. This consumes a large portion of an auditor's time. The Committee understands that a rule change has been proposed in this area; the rule, as changed, would

- 30 -

eliminate the requirement of physical inspection only for corporate fiduciaries located in the District of Columbia. In line with the Committee's view that the Court should reduce its surveillance of these private assets, the Committee believes it would be appropriate to eliminate this requirement for all fiduciaries who are fully bonded. Indeed, if the Court adopts a change in its philosophy in this area, as suggested, the Committee would favor elimination of this requirement in its entirety.

Recommendation: The Court Study Committee recommends that Civil Rule 305(b) be amended to eliminate the requirement that assets be physically inspected annually if the fiduciary is fully covered by bond. The Court should consider elimination of this rule in its entirety.

C. Pro Se Corporate Representation - Tax Division Rule 3(b)

The Tax Division, in its civil cases, uses many of the Civil Division rules of the Court. In most respects, this appears to have worked reasonably well. However, unlike the Civil rules, Tax Division Rule 3(b) permits pro se representation by corporations, which, while well intended, appears to work a disservice on the litigants and on the Court in terms of assuring a prompt and thorough presentation of a case in the shortest practical time. Matters before the Tax Division in which a corporation is a party are, by and large, substantially complex.

- 31 -

Recommendation: The Court Study Committee recommends that the Court re-examine Tax Division Rule 3(b), which permits pro se representation by corporations, to determine whether that rule is in the best interest of the parties and the Court.

SECTION VI EMPHASIS ON INFORMATION SERVICES AND THE TOOLS
OF FIDUCIARY, PROBATE AND TAX PRACTICE

Now that the transition to the D.C. Superior Court of these areas of practice has been effected in a smooth and efficient manner, the Committee believes that the Court and the bar should concentrate on improvements in the organization and on standardization of practice in these areas. As suggested earlier, the Committee firmly believes there should be a shift in the focus of use of the Court's limited personnel and resources. New efforts should be addressed toward the following types of activities.

A. Informational Pamphlets

Interviews with Court personnel and others revealed that certain kinds of problems, such as the sale of assets without prior court approval in a conservatorship or an interstate estate, are recurring in nature. The persons appointed to act as fiduciaries are frequently not advised by their counsel of the precise nature of their authority, the requirement to account annually, and similar matters. The public, the Court and the bar would all benefit if a pamphlet or brochure, which provided the most basic information in these areas, were developed and distributed by the appropriate office to each newly appointed fiduciary.

Recommendation: The Court Study Committee recommends that the Superior Court prepare and have available at the appropriate office for distribution pamphlets which set forth in plain English the duties and responsibilities of a conservator, administrator, or other fiduciary and which describe the role of the Court in the administration of estates. The appropriate division of the bar should assist the Court with this effort. These documents should be reviewed and revised periodically to ensure accuracy. The Court should also consider whether such a brochure for the public would be useful in the tax area.

B. Development of Form Pleadings

The Committee acknowledges the high degree of personal guidance and assistance the D.C. Superior Court gives the public and the bar in the probate area. There is a clear need for the Court to expand on these service initiatives and be of even greater assistance to the public and the bar, but perhaps in a less personalized way. The development and use of appropriate forms (pleadings, inventories, etc.) would greatly aid in that effort and would reduce the work of the Court in its review of standard pleadings in the probate area.

Recommendation: The Court Study Committee recommends that the Superior Court develop forms written in plain English for the standard filings in the probate area. These would include initially the petition for probate, the inventory form, and accounting forms.

C. Development of Accounting Standards

The Auditor-Master and the Register of Wills offices each has its own accounting format. They are not the same. Consistent with the recommendation in Section III.A hereof that the auditing functions of the D.C. Superior Court be combined, the

Committee believes that the Court should develop accounting standards for all fiduciaries.

Recommendation: The Court Study Committee recommends that the Court review its accounting standards with respect to fiduciaries with the view toward developing a single set of standards for all fiduciaries. The bar should, of course, assist in this effort. Special reference should be made to the Report of the Committee on National Fiduciary Accounting Standards published through the efforts of the Section of Real Property, Probate and Trust Law of the American Bar Association.

D. Index to Cases

There is a need for systematic guidance to both the bench and the bar on the practices of the Probate Division and the Tax Division. There have been a number of opinions in these areas, some published in the Washington Law Reporter and others unpublished, which constitute a valuable resource for all, but which have no adequate index system.

Recommendation: The Court Study Committee recommends that the Superior Court establish an index of those opinions of the Court in the probate and tax areas which address issues of law and that these indexes be kept current and be made available to the public. Again, the appropriate division of the bar should assist in this effort. Perhaps a specialized private publisher might be interested in this project and/or an area law school could be enlisted to assist in this effort.

E. Development of Legislative History for Use by the Tax Division.

The D.C. Superior Court has no adequate, accessible, legislative history library for the various D.C. taxing statutes with which the Tax Division is required to deal in individual

- 34 -

cases. This imposes a considerable burden on the judge functioning in this area.

Recommendation: The Court Study Committee recommends that the bar assist the Superior Court in assembling complete legislative histories of the pertinent taxing and other statutes which are regularly before the Tax Division for interpretation in individual cases.

SECTION VII RELATED MATTERS -- THE D.C. INHERITANCE TAX OFFICE

A. The Filing and Payment Dates

Estates of District of Columbia decedents are required to file tax returns with the Department of Finance and Revenue, Inheritance Tax Office of the District of Columbia for probate assets within fifteen months of the date of death; that tax is not due to be paid until eighteen months after the date of death. When the filing and payment date for the federal estate tax was changed in the early 1970's from fifteen months to nine months after the date of death, the District of Columbia did not make a similar move. This means that in estates of any size, a fiduciary cannot generally justify early payment of tax to the District of Columbia government. Though all other matters of probate administration may be complete, the fiduciary cannot bring the probate estate to a close until after eighteen months from the date of death. That delay is not caused by the Register of Wills office nor by the inattention of the fiduciary or attorney, but, rather, by the tax payment date for inheritance tax assessed by the District of Columbia.

Recommendation: The Court Study Committee recommends that the District of Columbia change the dates for filing and payment of District of Columbia inheritance taxes to nine months after the date of death, consistent with the requirement for the federal estate tax.

B. Observance of Probate Division Decisions

The D.C. Inheritance Tax office has engendered confusion in the probate area by refusing to follow, for inheritance tax purposes, holdings and rulings of the Probate Division of the D.C. Superior Court in particular estates. To have one office of the District of Columbia government not give credence to an order entered by the Superior Court because it is not the highest court of the jurisdiction (which has been the position taken by the D.C. Inheritance Tax office) undermines the credibility of the Court and engenders frustration with the District of Columbia processes in those cases in which the participants are not prepared to take a decision on appeal to the Court of Appeals of the District of Columbia, or, indeed, in those cases in which a favorable decision has been rendered at the Superior Court level, and the adverse party, in its judgment, fails to take an appeal.

Recommendation: The Court Study Committee recommends that the Superior Court leadership, the D.C. Department of Finance and Revenue, and appropriate bar leadership act jointly to determine how to eliminate the problem engendered by the D.C. Inheritance Tax office's refusal to abide by orders of the Probate Division of the Superior Court.

* * * *

APPENDIX A

PERSONS INTERVIEWED

1. Geof Alprin, Esq., Chief
Criminal Division
Office of the Corporation Counsel
personal interview, October 27, 1978
2. Ernest Bailey, Deputy Court Executive
D.C. Superior Court
personal interviews, May 19, 1978 and
October 27, 1978
3. Jack Baumgartner, Esq.
1666 K St., N.W.
Washington, D.C.
personal interview, December 1, 1978
4. Al Berling
Fiscal Officer
D.C. Superior Court
personal interview, November 9, 1978
5. Richard Brewer
Trust Department
Riggs National Bank of Washington, D.C.
17th & H. St., N.W.
Washington, D.C.
personal interview, July 31, 1978
6. Andy Canales
Accountant
Trust Department
American Security Bank N/A
15th & Penna. Ave., N.W.
Washington, D.C.
personal interview, August 1, 1978
7. Michael Curtin, Esq., Chairperson
Division B - Estates, Trusts and
Probate, of the D.C. Bar
personal interview, August 8, 1978

8. James Davey, Esq.
Clerk
U.S. District Court for the District
of Columbia
Washington, D.C.
personal interview, December 29, 1978
9. Jack Follin, Esq.
Auditor-Master
D.C. Superior Court
personal interview, August 9, 1978
10. Fred Grabowsky, Esq.
Bar Counsel
Board on Professional Responsibility
D.C. Bar
personal interview, January 5, 1979
11. Judge Margaret Haywood
D.C. Superior Court
personal interview, October 24, 1978
12. Donald Horton, Fiduciary Officer
D.C. Superior Court
personal interview, July 6, 1978
13. Ronald Larson
Trust Department
American Security Bank N/A
15th & Penna. Ave., N.W.
personal interview, August 1, 1978
14. Peter McLaughlin, Esq.
Register of Wills & Clerk, Probate Division
D.C. Superior Court
personal interview, August 2, 1978
15. Gregory Mize, Esq.
Staff Director
Judiciary Committee
D.C. Council
personal interview, June 2, 1978
16. Chief Judge H. Carl Moultrie I
D.C. Superior Court
personal interview, November 21, 1978
17. Rosemary Nunn
Small Estates Office
Register of Wills
D.C. Superior Court
personal interview, September 20, 1978

18. Judge John Garrett Penn
D.C. Superior Court
personal interview, October 26, 1979
19. Dr. Alfred Rector, Supervisor
Inheritance and Estate Tax Section
Department of Finance & Revenue
D.C. Government
personal interview, October 24, 1978
20. Louis P. Robbins, Esq.
Acting Corporation Counsel
D.C. Government
personal interview, September 28, 1978
21. Joan Saunders
Small Estates Office
Register of Wills
D.C. Superior Court
personal interview, September 20, 1978
22. David Scull, Esq.
Member, Maryland Legislature
Chevy Chase, Maryland
personal interview
23. Rosemary Stanfield, Clerk
Tax Division
D.C. Superior Court
personal interview, October 18, 1978
24. Melvin Washington, Esq.
President, Washington Bar Association
personal interview, October 2, 1978
25. George Windsor, Esq.
Probate Attorney
613 F St., N.W.
telephone interview, week of October 2, 1978

APPENDIX B

BIBLIOGRAPHY

Administrative Portions of Draft Uniform Probate Code -- An Appraisal, 2 Real Prop., Prob. & Tr. J. 273 (1962)

Bills to amend the D.C. Probate Code, Bills # 2-61, 2-135, and 2-271. The D.C. Council, Washington, D.C., 197B.

Bill to amend the D.C. Probate Code, Bill # 3-91. The D.C. Council, Washington, D.C., 1979.

Estate Administration: Current Practices & Proposed Uniform Probate Code, 3 Real Prop. & Prob. Tr. J. 143 (1968)

Georgetown University Law Center. Probate Reform Comparison Chart. April, 1978. The D.C. Project - Legislative Research, Washington, D.C., April, 1978.

Internal Report to Board of Judges on Fiduciary Responsibilities by Judge Margaret Haywood dated October 5, 1978.

Marshall. Probate Speeded Up And Stripped Down, 46 L.A. B. Bull. 387 (1971)

Maryland Follows the Code, 3 Real Prop., Prob. & Tr. J. 88 (1968)

New Hampshire Probate Court Manual, Vols. 1 & 2. National Center For State Courts, Jeffrey W. Leidinger, et al., Boston, Mass., March, 1976.

1977 Annual Report of District of Columbia Courts.

Policy Statement of D.C. Superior Court Chief Judge H. Carl Moultrie I, dated July 7, 1978. (unpublished)

Proposed Uniform Fiduciary Accounting Principles and Model Account Formats, 13 Real Prop., Prob. & Tr. J. 941 (1978).

Stein, Probate Administration Study: Some Emerging Conclusions, 9 Real Prop., Prob. & Tr. J. 596 (1974).

Whitman, Concept of a Probate Court Administrator, 111 Trusts & Est. 12 (1972).

- 40 -

Whitman, Preparing For the Future of Probate in America,
5 Conn. L. Rev. 557 (1974).

Whitman, Searching for a Reasonable and Balanced Fiduciary
Accounting System, 9 Inst. of Est. Plan. 6.1-.14 (1975).

COMMITTEE REPORT

COURT ORGANIZATION REPORT
OF THE D. C. COURT SYSTEM
STUDY COMMITTEE
OF THE
DISTRICT OF COLUMBIA BAR

Charles A. Horsky
Chairman

Samuel F. Harahan
Staff Director

October 27, 1981

(795)

TABLE OF CONTENTS

Court Organization Report

		<u>Page</u>
	Introduction	1
Section I	Judicial Policy Leadership	3
Section II	Rule-Making and Administrative Policy Making	12
Section III	Chief Judge Selection and Rotation	26
Section IV	Judicial Selection	38
Section V	Tenure and Disability	53
Section VI	Superior Court Management Structure	61
Section VII	Judicial Resource Needs	73
Section VIII	Judicial Compensation, Continuing Education and Retirement	81
Section IX	The Budget of the D.C. Court System	94
Section X	Information Systems	108
Appendix A	Persons Interviewed	
Appendix B	Bibliography	

COURT ORGANIZATION REPORT RECOMMENDATIONSPageSection I JUDICIAL POLICY LEADERSHIP

1. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that the Joint Committee on Judicial Administration be replaced by a Judicial Council of the District of Columbia. The Committee further recommends that the Judicial Council consist of five judges of the Court of Appeals, the Chief Judge and four associate judges, and four judges of the Superior Court, the Chief Judge and three associate judges. 5
2. Recommendation: The Court Study Committee recommends that the associate judge members of the Judicial Council be selected for staggered terms of three years, and each be limited to no more than two successive terms on the Council. 6
3. Recommendation: The Court Study Committee recommends that the budget of the District of Columbia Courts be a single, unified budget, prepared and administered by the Executive Office of the Courts under the overall authority of the Judicial Council. 7
4. Recommendation: The Court Study Committee recommends that the Court Executive serve as an ex-officio non-voting member of the Joint Committee on Judicial Administration, and of the Boards of Judges of the Superior Court and Court of Appeals. 10
5. Recommendation: The Court Study Committee recommends that D. C. Code §11-1703(b) be amended to eliminate the requirement that the Executive Officer of the D. C. Courts be appointed from a list of persons submitted by the Director of the Administrative Office of the United States Courts. 11

- | | <u>Page</u> |
|---|-------------|
| 6. <u>Recommendation: The Court Study Committee recommends that D. C. Code §11-1703(b) be amended to provide that the Executive Officer of the District of Columbia Courts be appointed by the Chief Judges of the District of Columbia Courts with the advice and consent of the Judicial Council of the District of Columbia.</u> | 11 |
|
Section II <u>RULE-MAKING AND ADMINISTRATIVE POLICY MAKING</u> | |
| 7. <u>Recommendation: The Court Study Committee recommends that Section 11-946 of the D.C. Code be amended to provide that the general rules of procedure of the D.C. Superior Court and the D.C. Court of Appeals be promulgated by a Judicial Council of the District of Columbia, as constituted in Recommendation One of this Report, a majority of whose members shall be active judges of the Court of Appeals.</u> | 18 |
| 8. <u>Recommendation: The Court Study Committee recommends that the D.C. Judicial Council create a two-level system of committees to develop court rules. The first tier should function as an advisory rules committee, organized by subject area and composed solely of practicing attorneys, legal scholars, and others knowledgeable about particular areas of court operation(s). The second rules committee tier should be a D.C. Judicial Council Rules Committee composed solely of trial and appellate court judges.</u> | 18 |
| 9. <u>Recommendation: The Court Study Committee recommends that the D.C. Courts consider the periodic promulgation, publication, and application of general orders, uniform orders, and/or administrative policies by the Superior Court and the Court of Appeals.</u> | 18 |
| 10. <u>Recommendation: The Court Study Committee recommends that all proposed rules of the D.C. Courts be publicly circulated for review and comment at least 60 days prior to their planned adoption.</u> | 21 |

	<u>Page</u>
11. <u>Recommendation: The Court Study Committee recommends that consideration be given to adopting a set of procedures, following the federal-court model, whereby proposed rules are published at the time they are adopted by the advisory rules committees described in Recommendation No. 8 above, and at other similar major stages.</u>	21
12. <u>Recommendation: The Court Study Committee recommends that the D.C. Courts adopt a policy of making all new or amended rules effective on either the January 1 or July 1 following the Court's adoption of the Rule. Rules promulgation at other times during the year should be allowed only infrequently, when the particular circumstances merit such action.</u>	21
13. <u>Recommendation: The Court Study Committee recommends that Rules of Evidence be adopted by the D.C. Court System, modeled on the Federal Rules of Evidence.</u>	23
14. <u>Recommendation: The Court Study Committee recommends that an active liaison be established between the D.C. Court leadership and the D.C. Council and Congress, whose acts may affect the administration of justice.</u>	25

Section III CHIEF JUDGE SELECTION AND ROTATION

15. <u>Recommendation: The Court Study Committee recommends that, each time a D.C. Courts chief judge is to be selected, the D.C. Judicial Nomination Commission publicly announce in advance the objective criteria by which all candidates for chief judge will be evaluated. Such criteria should include:</u>	30
(a) Administrative and managerial ability and experience; (b) Ability to secure financial and other support for the Court; (c) Ability to identify and address problems within the Court and in the general administration of justice in the District of Columbia;	

- (d) Utilization of the private bar to assist in analyzing and addressing issues in court administration;
 - (e) Ability to lead the Court so as to insure a quality product and an efficient operation;
 - (f) Ability to promote a sense of cooperation among the associate judges and court staff, and assist in providing a sense of unified concerns within the Court.
16. Recommendation: The Court Study Committee recommends that Section 431(b) of P.L. 93-198, the "Home Rule Act," be amended to provide that the chief judge of a District of Columbia Court be elected by secret ballot by the judges of the court in regular active service from among their number, for a four year term. Procedures for conducting such elections should be set forth in Court Rules. The Court Study Committee strongly favors a policy of chief judge rotation every four years except in unusual circumstances. 37

Section IV JUDICIAL SELECTION

17. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that the judicial member of the D.C. Judicial Nomination Commission may be selected without regard to residency in the District of Columbia. Judges with substantial demonstrated knowledge of, and experience with the District of Columbia Courts, either as counsel or judge, should be given major consideration when selecting the judicial member of the Commission. 42
18. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide up to 60 days for the D.C. Judicial Nomination Commission to nominate candidates for vacancies on the D.C. Courts. 44

	<u>Page</u>
19. <u>Recommendation: The Court Study Committee recommends the D.C. Judicial Nomination Commission adopt a written policy of submitting names of judicial candidates to the President for vacancies caused by the mandatory retirement of a judge not less than 180 days prior to the effective retirement date.</u>	44
20. <u>Recommendation: The Court Study Committee recommends that consideration be given by the U.S. Congress and the D.C. Council to amending the D.C. Code to provide for interim judicial appointments to the D.C. Courts when the Chief Executive's nomination is made during a Congressional recess or between sessions.</u>	45
21. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be amended to restrict access to materials furnished to or developed by the D.C. Judicial Nomination Commission.</u>	46
22. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be made clear so as to exempt the D.C. Judicial Nomination Commission from the requirement to hold public meetings.</u>	47
23. <u>Recommendation: The Court Study Committee recommends that a policy be adopted whereby the judicial candidate recommendations of the D.C. Judicial Nomination Commission to the President are announced publicly at the time they are forwarded to the President. Should legislation be required to implement this recommendation, it should be enacted, and in the interim the Office of the President should adopt a practice of releasing publicly the list of candidates it has received from the Commission.</u>	48
24. <u>Recommendation: The Court Study Committee recommends that an annual report of the D.C. Judicial Nomination Commission be published to inform the public of the activities and functions of the Commission.</u>	48
25. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be amended to allow the D.C. Judicial Nomination Commission to include among those recommended for judicial vacancies persons previously recommended but not selected by the President.</u>	50

- | | <u>Page</u> |
|--|-------------|
| 26. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be amended to authorize the D.C. Judicial Disability and Tenure Commission, in its discretion, to disclose to the D.C. Judicial Nomination Commission information which it may possess relating to any judge under consideration by the Commission for elevation to the Court of Appeals or to the office of chief judge.</u> | 50 |
| 27. <u>Recommendation: The Court Study Committee recommends that the D.C. Judicial Nomination Commission develop and promulgate criteria used to screen attorneys for possible judicial nomination.</u> | 51 |

Section V TENURE AND DISABILITY

- | | |
|---|----|
| 28. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require judges eligible for reappointment to formally notify the D.C. Commission on Judicial Disabilities and Tenure as to their plans regarding an additional judicial term 180 days before their terms expire. The statute also should be amended to provide that the Commission must file its report with the President at least 60 days prior to the expiration of a judge's term. In the interest of fairness to the judge affected, and to the community, the nominating and confirming authorities should also be required to act with reasonable dispatch.</u> | 55 |
| 29. <u>Recommendation: The Court Study Committee recommends that the D.C. Code be amended to delete the judicial reappointment evaluation category of "exceptionally well qualified."</u> | 57 |

30. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that any judge voluntarily retiring from the D.C. Courts who wishes to continue in judicial service in a Senior Judge capacity be reviewed by the D.C. Commission on Judicial Disabilities and Tenure at the time of retirement and every five years thereafter as to his or her continued capacity to serve. The D.C. Code should further provide that judges over seventy years of age be reviewed in a similar manner by the Commission every three years. It is suggested that an evaluation standard such as the existing "cause for concern" provision be used in this area by the Commission. 58
31. Recommendation: The Court Study Committee recommends that the Judicial Evaluation Committee of the D.C. Bar, as well as other groups performing a similar function, complete its investigations and report on any judge who is likely to seek reappointment at least 90 days prior to the date the judge must declare his or her candidacy for reappointment. 59

SECTION VI SUPERIOR COURT MANAGEMENT STRUCTURE

32. Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court set forth in writing the major duties and authority of the divisional administrative judges. The Office of the Court, Executive and/or the Clerk of the Superior Court, and of the subordinate divisions of the Court should be charged by the chief judge with providing administrative support in connection with duties of the administrative judges. 63
33. Recommendation: The Court Study Committee recommends that judges be assigned to a major division of the Superior Court for one-year periods. 69
34. Recommendation: The Court Study Committee recommends that the Superior Court Chief Judge maintain and utilize a system of Court committees, including such areas as generally set forth in the ABA Standards Relating to Trial Courts. Periodic reports of the work and membership of such committees should appear in the D.C. Courts Annual Reports. 72

Section VII JUDICIAL RESOURCE NEEDS

35. Recommendation: The Court Study Committee recommends that there be added, to Title 11 of the D.C. Code, a provision similar to 28 U.S.C. §371(b), allowing a judge to "retire from regular active service" while retaining his or her position as a judge, and to be referred to as a Senior Judge. 77
36. Recommendation: The Court Study Committee recommends that the leadership of the D.C. Courts in consultation with the D.C. Council, the U.S. Congress, and others as appropriate, promptly study the number of judges and other related resources needed in the Superior Court. Should such a study indicate that additional judges or other support personnel are needed appropriate legislation should be enacted at the earliest feasible time. 80

SECTION VIII JUDICIAL COMPENSATION, CONTINUING EDUCATION AND RETIREMENT

37. Recommendation: The Court Study Committee favors raising the D.C. Courts judges' salary levels as generally set forth by the Presidential Pay Commission in December 1980. 82
38. Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that Federal judges with prior D.C. Courts service will receive credit for such D.C. service for purposes of retirement but shall not collect retirement under the D.C. system while still active Federal judges. 84
39. Recommendation: The Court Study Committee recommends that every effort be made to provide adequate support staff to retired or senior status judges who continue in active, substantially full-time, judicial service. 86
40. Recommendation: The Court Study Committee recommends that a needs assessment of in-service judicial education in the D.C. Courts be conducted. The analysis should identify areas requiring priority attention as well as development of a phased plan for assuring the availability of adequate in-service judicial and non-judicial education in the District of Columbia. 89

- | | <u>Page</u> |
|--|-------------|
| 41. <u>Recommendation: The Court Study Committee recommends that the Board of Judges of the Superior Court adopt a policy requiring mandatory continuing judicial education for judges each time they are assigned to a new Division within the Court, or to an assignment where they have not served in the previous three years.</u> | 91 |
| 42. <u>Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration appoint a committee of judges, subordinate Court personnel and others to develop and facilitate the availability of a comprehensive continuing education program for Court employees -- judicial and non-judicial.</u> | 93 |

SECTION IX THE BUDGET OF THE D.C. COURT SYSTEM

- | | |
|--|-----|
| 43. <u>Recommendation: The Court Study Committee finds that the degree of fiscal interference and budgetary oversight by the D.C. Budget Office and Mayor of the D.C. Courts' budget is wholly inappropriate, and not in keeping with the clear statutory intent of the 1970 D.C. Court Reform Act and the D.C. Home Rule Act that the D.C. Courts be an independent and separate branch of the D.C. Government. The Committee recommends that the D.C. Courts adhere to a procedure of determining and requesting appropriation needs independent of any advance fiscal ceilings "imposed" by the Executive Branch.</u> | 105 |
| 44. <u>Recommendation: The Committee further recommends that the Mayor of the District of Columbia provide the D.C. Court System the degree of fiscal autonomy as provided for in the 1974 Home Rule Act.</u> | 106 |
| 45. <u>Recommendation: The Court Study Committee recommends that the Council of the District of Columbia and the Congress annually limit any budgetary recommendations regarding the D.C. Courts' budget to broad program areas, leaving to the Court leadership the decision as to where and how to effect the changes.</u> | 106 |

- | | <u>Page</u> |
|--|-------------|
| 46. <u>Recommendation: The Court Study Committee recommends that the Congress give greater deference to the D.C. Court System's Annual Budgetary Proposal, and that any inquiries about aspects of the Courts' budget proposal be directed to the D.C. Courts as a separate and independent Branch of the District Government, and not to the Mayor or the District Budget Office.</u> | 106 |
| 47. <u>Recommendation: The Court Study Committee recommends that the Board of Governors of the D.C. Bar discuss with the voluntary bar associations' leadership the issue of organized bar support of the D.C. Court System budgetary needs and priorities where warranted, after appropriate study and consultation with Court leadership.</u> | 107 |

SECTION X INFORMATION SYSTEMS

- | | |
|---|-----|
| 48. <u>Recommendation: The Court Study Committee recommends that the D.C. Superior Court's automated information systems be deployed so as regularly to provide much greater aggregate data for the Court's use in policy formulation and management.</u> | 110 |
| 49. <u>Recommendation: The Court Study Committee recommends that the D.C. Court's information systems be equipped with generalized inquiry and report writer software.</u> | 111 |
| 50. <u>Recommendation: The Court Study Committee recommends that the D.C. Courts' information systems be thoroughly documented, and that procedures be adopted to assure that documentation is kept up to date.</u> | 112 |
| 51. <u>Recommendation: The Court Study committee recommends that the D.C. Courts' automated information systems be designed and structured to permit periodic purging of closed cases to a history file.</u> | 113 |
| 52. <u>Recommendation: The Court Study Committee recommends that the D.C. Court Systems' automated systems be integrated into the administrative support functions of the Courts and not be a separate unrelated activity.</u> | 114 |

53. Recommendation: The Court Study Committee recommends that the D.C. Courts leadership adopt a public information policy which facilitates public understanding of court operations in all appropriate areas through more ready and frequent availability of statistical and other information.

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the court organization area. The purpose of the Court Study Committee has been to assess the impact and the changes resulting from the enactment of the 1970 D.C. Court Reform and Criminal Procedures Act and to offer procedural, statutory and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. court system leadership, and to the community. The D.C. Court System Study Committee, chaired by Charles A. Horsky, is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Court Organization Subcommittee was responsible for the principal investigative and analytic work leading to the Court Study Committee's findings and recommendations in this area. Subcommittee members Fred M. Vinson, Jr., Michael Altier, Edmund Campbell, Willie Leftwich, William A. Hamilton and Thomas Lumbard, Chair, were assisted in the drafting of their report by Samuel F. Harahan, staff director of the Committee. The Honorable Peter H. Wolf, Associate Judge of the Superior Court also served as a member of the Subcommittee until the time of his appointment to the bench.

The Court Organization Subcommittee is very appreciative of the time and interest of many judges, court staff, and others in the course of preparing this report.

In developing its findings and recommendations, the Court Study Committee had the benefit of all the historical records and files of the Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit. This D.C. Circuit Judicial Council ad hoc Committee on the Administration of Justice, chaired by Newell W. Ellison (the "Ellison Committee"), used a professional court management study team to examine the local courts and related agencies in the District of Columbia during the period 1966 to 1970. The materials of the Ellison Committee have been an invaluable resource in understanding the operation of the courts of the District of Columbia during the 1960's, and the Court Study Committee has relied on these papers for much of the historical discussion contained in this report.

The Committee had access to a 1979 caseflow analysis pertaining to the Superior Court which was performed under contract from the Court by a private social science organization, as part of an overall court delay reduction project. These materials were useful to the Committee in developing its report findings.

Finally, the Court Study Committee actively used the American Bar Association Standards Relating to Court Organization in researching the findings and recommendations.

SECTION I JUDICIAL POLICY LEADERSHIP

The 1970 D. C. Court Reform Act provides that the highest administrative authority in the District of Columbia Court System is a five-judge Joint Committee on Judicial Administration. By statute, this body is chaired by the Chief Judge of the D. C. Court of Appeals; one other member from that Court is elected annually by its judges. The Act provides that the Superior Court has three members on the Joint Committee: its Chief Judge and two annually elected associate judges.

Thus in the District of Columbia the final voice on matters of judicial administration is a committee controlled by the judges of the trial court. The Court Study Committee could locate no other American jurisdiction where that is the case. Most states observe a standard pyramidal structure, with the highest court on top of the system in matters of overall administration, as it is in legal matters, and the chief justice of that court at the pinnacle. Some states lodge final administrative authority in a judicial council, or in a judicial conference similar to that of the federal courts. Such bodies usually include trial judges, but the statutory system in the District of Columbia is unique in that it is controlled by trial judges, and doubly unique in that it is controlled by the judges of a single trial court.

It should be noted also that the District of Columbia may be the only state court system in the United States with

but one trial court and one appellate court. Thus the argument can be made that the adoption of uniform state-wide court policies and procedures may be easier to attain in the District of Columbia Courts than in states with large numbers of trial or appellate courts, or expansive geography.

The drafters of the 1970 D.C. Court Reform Act rightly perceived that most of the administrative problems of the new D.C. Court System would be in the trial court. They followed that perception to a logical conclusion that the trial court should therefore have the largest voice in matters of judicial administration, and created a body, the Joint Committee, whose membership and responsibilities embodied that conclusion. The drafters realized that this scheme was unique and experimental, but felt that a court system consisting of only two courts, sitting in a single courthouse or courthouse complex, was also a unique institution. They hoped that one unique institution would serve the needs of the other.

In the view of the Court Study Committee, ten years of operational history with the Joint Committee on Judicial Administration have demonstrated that they were wrong. Control of a court system by a trial court has proven to be an idea that has not worked. It is this Committee's conclusion that the Joint Committee on Judicial Administration should be abolished; its administrative powers should be given to a Judicial Council of the District of Columbia on which the Court of Appeals has a majority. Some of its statutory powers,

such as the power to establish a Criminal Justice Act plan, should be reallocated between the Court of Appeals and the Superior Court.

The time has come, in our view, for the District of Columbia Court of Appeals to become the mistress of its own house. This legal community should abolish the last vestige of the historic attitude summed up in the phrase "little court of appeals," the attitude that the D.C. Court of Appeals was a backwater in the flow of judicial business, and that the real "action" was in the Court of General Sessions and the federal courts.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that the Joint Committee on Judicial Administration be replaced by a Judicial Council of the District of Columbia. The Committee further recommends that the Judicial Council consist of five judges of the Court of Appeals, the Chief Judge and four associate judges, and four judges of the Superior Court, the Chief Judge and three associate judges.

The members of the present Joint Committee, other than the two chief judges, are elected, annually, by the judges of their respective courts. The Court of Appeals has rotated its representation; four associate judges have filled the one position, over the past nine years. The Superior Court kept the same two associate judges on the committee from 1971 until their retirement in 1981.

Directly related to the above recommendation is the Court Study Committee's conclusion that members of the Judicial

- 6 -

Council be elected by the active judges of their respective court. This latter view is not independent of the recommendation of this Committee found in Section III of this Court Organization Report that the chief judges be selected by the judges, rather than as presently provided by an independent Judicial Nomination Commission. In order to insure both continuity and periodic change, we also recommend that the associate judge members of the Judicial Council be selected (by whatever process) for staggered terms of three years, with a prohibition on any judge serving more than two successive terms.

Recommendation: The Court Study Committee recommends that the associate judge members of the Judicial Council be selected for staggered terms of three years, and each be limited to no more than two successive terms on the Council.

As will be seen elsewhere in this Report, the Court Study Committee also recommends that the Judicial Council be the overall rule-making authority of the D.C. Court System, with certain local administrative rules and policies set by each Court on its own initiative, and that the court executive be an ex-officio non-voting member of the Judicial Council.

The Court Executive Function

Another vital aspect of the administration of the D.C. Court System that the Court Study Committee believes must be reformed is its internal fiscal administration. The D.C. Court System should have a unified budget that is prepared by

- 7 -

the Executive Officer for all its courts (whether two or three is irrelevant to this question), rather than separate budgets for each court, stitched together by the Joint Committee before it sends them on to the legislature. That is how the budget of the federal courts is prepared. The courts of the states present few models, because different state courts have historically been financed not only by state legislatures, but also by county and city councils. Many state trial courts, although theoretically now part of unified state court systems with unified budgets, remain dependent on city or county personnel, and funding, for a number of services. That is not substantially true of the D.C. Courts; except for the services of the U.S. Marshal, its operations are entirely financed by the District of Columbia Government.

Unification of the D.C. Court System budget would also help to emphasize the fact that the courts are a separate branch of the District Government, not two quasi-executive agencies. These matters are discussed more fully in the separate section of this report on the D.C. Courts, on budgetary autonomy.

Recommendation: The Court Study Committee recommends that the budget of the District of Columbia Courts be a single, unified budget, prepared and administered by the Executive Office of the Courts under the overall authority of the Judicial Council.

The process of seeking an Executive Officer for the D.C. Courts is somewhat prolonged by the statutory processes imposed by the 1970 D.C. Court Reform Act. The drafters of

- 8 -

the 1970 Act, finding no ascertainable qualifications for court executives, adopted the usual alternative to writing qualifications into the statute: a mechanism that would provide a list of qualified candidates from which the Joint Committee could choose. The mechanism they chose was to have the list of candidates drawn by the Director of the Administrative Office of the United States Courts.

That system apparently did not work well. It provided the judges with built-in excuses both for the failure of their first appointee and for not removing him in favor of another unknown quantity. Above all, it obliterated the possibility that the judges would feel that the Court Executive was their selection, a feeling that could have been engendered had the judges been more responsible for the recruitment process. Indeed, it is common knowledge that the judges were told in no uncertain terms that they could not appoint their choice for the job because he was not on the list submitted by the Director of the Administrative Office of the U.S. Courts, the entity named in the Act to develop a list of qualified candidates.

It appears that the Director of the Administrative Office and the judges were able to reach an informal accommodation in the choice of an Executive Officer in 1978, and that the choice of the incumbent Executive Officer was a happier one both in process and in result. The statutory scheme was made to work, perhaps somewhat in spite of itself.

- 9 -

We recommend that the method established for the selection of the Executive Officer by D.C. Code § 11-1703 be replaced. In its stead, we recommend that the appointing judges or group of judges be allowed to appoint whoever they believe is most qualified. The judges have now had enough historical experience with an ineffective Executive Officer to be aware of the consequences of a bad appointment. There is no reason to believe that they cannot be trusted to make a good one.

We would also suggest that the amended § 11-1703 might require the judges to consult with the Director of the Administrative Office and with the Commission on Qualifications of Federal Circuit Executives, for the purpose of obtaining the names of qualified candidates. We would not require that the Executive Officer be a person certified as qualified by the Commission, nor would we insert in the statute a rigid list of qualifications for the post.

The statute now vests the power to appoint the Executive Officer in the Joint Committee, but requires that both Chief Judges concur in the appointment. Assuming that no third Chief Judge comes into being, this scheme appears useful, although the power could be vested in the Judicial Council we have recommended to replace the Joint Committee. Both courts should have a voice in the appointment.

The position of Court Executive, by legislative enactment and intent, is the senior non-judicial employee in the

District of Columbia Courts. The 1970 D.C. Court Reform Act fixes the annual compensation for this position at that of an associate judge. The Act specifies that the court executive shall be responsible for the administration of the District of Columbia court system subject to the supervision of the Joint Committee and the respective chief judges.

In order for the Court Executive to fully perform the responsibilities of the office it is essential that access to the respective judicial policy and decision forums be present as a matter of course. The District of Columbia Courts have three such judicial policy/administration bodies, the Boards of Judges of the Superior Court and the Court of Appeals, and the Joint Committee of Judicial Administration. Each of the two boards and the Joint Committee are concerned with court administration related matter on an ongoing basis.

The Court Study Committee believes that the Court Executive position as a matter of course should sit ex-officio as a non-voting member of the Boards of Judges of the superior Court and the Court of Appeals, as well as of the Joint Committee on Judicial Administration. It is only through such full involvement in the overall functioning of the D.C. Courts and court system that the full potential value of the court executive office can be realized.

Recommendation: The Court Study Committee recommends that the Court Executive serve as an ex-officio non-voting member of the Joint Committee on Judicial Administration, and of the Boards of Judges of the Superior Court and Court of Appeals.

- 11 -

Recommendation: The Court Study Committee recommends that D. C. Code §11-1703(b) be amended to eliminate the requirement that the Executive Officer of the D. C. Courts be appointed from a list of persons submitted by the Director of the Administrative Office of the United States Courts.

Recommendation: The Court Study Committee recommends that D. C. Code §11-1703(b) be amended to provide that the Executive Officer of the District of Columbia Courts be appointed by the Chief Judges of the District of Columbia Courts with the advice and consent of the Judicial Council of the District of Columbia.

SECTION II RULE-MAKING AND ADMINISTRATIVE POLICY MAKING

Introduction

The section which follows examines the areas of rule making and administrative policy making in the D. C. Courts. A description of the rules process employed by the D. C. Courts is provided together with findings and recommendations in a number of areas.

A. Statutory Framework and Practice

The basic authority for rule making in the D.C. Court System is found in Title 11 of the D.C. Code, as codified by the 1970 D.C. Court Reform Act. The section governing the D.C. Court of Appeals, § 11-743, provides:

Rules of Court. The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules.

The section governing the Superior Court, §11-946, provides:

Rules of Court. The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in Title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it

- 13 -

in the performance of its duties under this section.

Pursuant to this legislative mandate, both Courts adopted new sets of procedural rules, which became effective February 1, 1971, and each Court has amended those rules from time to time since then. The rules adopted by the Superior Court when that Court came into being were far more detailed and comprehensive than those of its predecessors, the General Sessions Court and the Juvenile Court. Members of the bench and bar who have devoted this time and effort to the development and refinement of the D.C. Courts rules deserve commendation for this important work.

Title, II, Section 946 of the D.C. Code, as quoted above, provides that the Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Superior Court may, subject to the approval of the D.C. Court of Appeals, adopt rules which modify the Federal Rules. Furthermore, the Superior Court may adopt, without the approval of the D.C. Court of Appeals, rules which do not modify the Federal Rules. Lastly, Section 946 grants the Court authority/power to appoint a committee of lawyers to advise it in adopting such rules.

In terms of the actual workings of the Superior Court rule-making, various advisory rules committees and the general public propose new rules or amendments to rules already

- 14 -

in force.¹ Proposed rules of procedure are adopted by the Superior Court Rules Committee, pre-published for comment to a number of the voluntary bar associations as well as to the D.C. Bar. Proposed rules are then submitted to the Superior Court Board of Judges for adoption, then forwarded to the D.C. Court of Appeals for acceptance before formal publication.² Proposed rules upon adoption are published.

It is important to differentiate between procedural rules, such as those embodied in the formally promulgated Superior Court Rules and the Rules of the D.C. Court of Appeals, and the more limited administrative rules, or general orders, such as the D.C. Court of Appeals Internal Operating Procedures. (The D.C. Superior Court has no companion document to the Court of Appeals Internal Operating Procedures.) It is the practice in most state court systems, and in the federal trial and appellate courts, for local administrative policies to be issued by the specific court in the form of local rules, while the more far-reaching procedural rules are promulgated on a

¹ The Superior Court rule-making procedures involve 24 of the 44 judges and 50 members of the Bar. Additionally, many other attorneys and legally related groups, and organizations contribute substantial pro bono effort to the overall rules development process.

² The current local process usually requires about 11-1/2 months from initiation. However, the process can apparently be shortened to three months where necessary, and in some instances has taken considerably longer than the 11 month average.

- 15 -

system-wide basis. This existing judicial administrative practice is consistent with ABA Court Organization Standard 1.31, which states in part that:

"A court system should have authority to prescribe rules of procedure, civil and criminal."

It is somewhat unusual, if not unique, for a trial court (even a statewide trial court of general jurisdiction) to have plenary power to adopt general rules of trial procedure. Much more frequent, in state judicial systems, as noted, is a process similar to that established for the federal courts by 28 U.S.C. §§ 2071-2076 and 18 U.S.C. § 3771 and 3772. In most states, the general rule-making power is vested either in the state's highest court or, somewhat less frequently, in a judicial council which is the highest administrative authority in the state court system. In the federal courts, the Supreme Court is the de jure promulgator of Federal Rules, under the statutes cited, but the real work is done by the Judicial Conference of the United States and by advisory committees thereof. The Judicial Conference of the United States consists of the Chief Justice (chairman), the chief judges of the Circuit Courts of Appeal, and of the Court of Claims and Court of Customs and Patent Appeals, and one district judge from each circuit, elected by its district judges. Its committees, including the various advisory committees on rules, often are headed by judges who are not members of the Conference, and include members who are not federal judges.

- 16 -

The Court Study Committee, while sensitive to the unique character of the District of Columbia and its courts, concludes that the authority to make general rules of procedure should vest either in a judicial council of the District of Columbia -- a majority of whom shall be active Court of Appeals judges -- or with the D.C. Court of Appeals as a body. (The reader is referred to Section One of this Court Organization Report for more focussed discussion on the Judicial Council issue.)

The Court Study Committee recognizes and acknowledges the competent and generally thorough manner in which the rules development process has functioned in the D.C. Superior Court over the past ten years since the court was created. The position of the Committee regarding vesting rule-making responsibility in a judicial council relates to the anticipated functional or structural advantage of having the appellate court pre-eminent in areas of overall District of Columbia judicial administration, and in no way reflects unfavorably on the industry of existing Rules Committee members or on their work products.

To assist it in the rules development process the D.C. Judicial Council should create separate Advisory Committees for each set of procedural rules now in being, or that it might consider adopting. The various advisory committees should be composed solely of practicing attorneys, legal scholars and others knowledgeable about particular areas of

- 17 -

court operation(s). Judges should not be members of these advisory rules committees. Work products of the advisory rules committees should flow to a D.C. Judicial Council rules committee composed solely of trial and appellate court judges. This latter Court committee would accept, reject, or modify rules recommendations proposed by the advisory committees. As noted above, the Court Study Committee believes that final rule-making authority should vest in the Judicial Council.

The Court Study Committee recognizes the value and necessity of each Court employing internal administrative policies, and commends the Court of Appeals for making such materials publicly available.

At present, there is insufficient recognition of general orders or uniform orders within the D.C. Court System. However, both general and uniform orders directly affect the functioning of the courts in a manner similar to that of the procedural rules. While general and uniform orders carry less weight respectively than the rules of procedure, and also tend to be narrower in scope and application, the use of such administrative orders should be considered as an alternative to formally promulgated rules of procedure in each instance. Special attention should be given to the unique character of general and uniform orders in that they may expedite the solution of procedural problems resulting from exigent circumstances.

- 18 -

Another important reason for instituting uniform administrative policies or general orders by each court is the possible expedition with which this process can be accomplished as compared with instituting new or amended court rules. Overall, one of the most serious concerns the Court Study Committee had with the rules development process was the length of time often required in the past for new or modified rules to be adopted. Use of such approaches in each court as promulgated operating policies and procedures should facilitate some areas of rule development. Other steps also should be undertaken to expedite the rule development timetable.

Recommendation: The Court Study Committee recommends that Section 11-946 of the D.C. Code be amended to provide that the general rules of procedure of the D.C. Superior Court and the D.C. Court of Appeals be promulgated by a Judicial Council of the District of Columbia, as constituted in Recommendation One of this Report, a majority of whose members shall be active judges of the Court of Appeals.

Recommendation: The Court Study Committee recommends that the D.C. Judicial Council create a two-level system of committees to develop court rules. The first tier should function as an advisory rules committee, organized by subject area and composed solely of practicing attorneys, legal scholars, and others knowledgeable about particular areas of court operation(s). The second rules committee tier should be a D.C. Judicial Council Rules Committee composed solely of trial and appellate court judges.

Recommendation: The Court Study Committee recommends that the D.C. Courts consider the periodic promulgation, publication, and application of general orders, uniform orders, and/or administrative policies by the Superior Court and the Court of Appeals.

B. Circulation of Proposed Procedural Rules

Rule changes in Superior Court come about by two general methods. First, any change in the Federal Rules will automatically change the equivalent Superior Court rule unless affirmative action is taken by the Board of Judges of the Superior Court and approved by the D. C. Court of Appeals to modify such Federal Rule change (D.C. Code §11-946; Rule 83-I, SCR-Civil). Second, ideas for rule changes originate with individuals who may be judges, attorneys in private practice or with a governmental agency, or perhaps members of the Clerk's office, to name a few. However the matter of change arises, it is automatically referred to the appropriate Superior Court rules advisory committee for analysis and comment. The advisory committee also drafts proposed rules with the assistance of an attorney advisor employed by the Court. The advisory committees on civil and criminal rules meet on a regular basis. If a proposed change is not approved or recommended by the advisory committee, it generally receives no further consideration. There have been occasions, however, when a rule change has been adopted even though the advisory committee recommended against the change. The rules committee of the Court, or the Board of Judges, can override any decision of the advisory committee, although this rarely occurs.

From February 1971 to March 1977 the procedural rules promulgation process did not provide opportunity for comment or advance notice of forthcoming rules by those not

- 20 -

directly involved with the actual rules amendment or formulation activity. By having a number of judges and attorneys on the several rules advisory committees, it was felt that the Court was receiving a sufficient range of views before adopting new rules of procedure.

Commentary for the ABA Court Organization Standard 1.30 and 1.31 regarding rule making, includes a general prescription for the rules process, which the Court Study Committee supports:

The essential features of a balanced and effective rule-making procedure are the participation of judges, lawyers, legal scholars, and legislators in deliberations concerning the rules, the provision of staff assistance for research and drafting, and public circulation of proposals for review and comment before their adoption.³

The Court Study Committee endorses the recent initiatives of the D.C. Superior Court and the Court of Appeals to circulate proposed rules of procedure for comment prior to their adoption. Seeking broad input would bring the District of Columbia Courts closer to ABA Standard §1.30, calling for public participation in the rule-making process.

In addition to assuring that proposed rules of the D.C. Courts are circulated for comment, the Court Study Committee would also urge that proposed rules be disseminated at each major stage in the adoption process. Thus, proposed rules should be circulated for public comment following their

³ ABA Commission on Standards of Judicial Administration. Standards Relating to Court Organization. 1974, p. 74.

- 21 -

adoption by the appropriate advisory rules committee as well as upon adoption by the D.C. Judicial Council.

Recommendation: The Court Study Committee recommends that all proposed rules of the D.C. Courts be publicly circulated for review and comment at least 60 days prior to their planned adoption.

Recommendation: The Court Study Committee recommends that consideration be given to adopting a set of procedures, following the federal-court model, whereby proposed rules are published at the time they are adopted by the advisory rules committees described in Recommendation No. 8 above, and at other similar major stages.

C. Rules Promulgation in Advance of Effective Date

Since the implementation of the 1970 D.C. Court Reform Act, court rules have been promulgated from time to time. Some states employ a procedure whereby, unless an emergency arises, rule changes become effective twice a year, such as January 1 and July 1.* One of the principal benefits of such an approach is that an orderly framework for change within the court and among the bar is provided, and there would appear to be less likelihood for counsel to be unaware of new procedures in use by the Court.

Recommendation: The Court Study Committee recommends that the D.C. Courts adopt a policy of making all new or amended rules effective on either the January 1 or July 1 following the Court's adoption of the Rule. Rules promulgation at other times during the year should be allowed only infrequently, when the particular circumstances merit such action.

* Maryland being the closest in proximity to the District of Columbia.

- 22 -

D. Consistency of D.C. Courts' Rules with Federal Rules

At the time the 1970 D.C. Court Reform Act was drafted, provision was made in D.C. Code 11-743 and 11-946 for the Superior Court and the Court of Appeals to employ the cognizant federal procedural rules unless the Courts adopted modifications thereto. The statute enumerated for inclusion by the D.C. Courts the only sets of Federal Rules then in existence. Since that time, the U.S. Supreme Court has adopted other rules, notably for post-conviction criminal proceedings and habeas corpus, and the Supreme Court and Congress have fashioned the Federal Rules of Evidence.

The drafters of the 1970 D.C. Court Reform Act essentially intended that the practice in the local and federal courts of the District of Columbia be as similar as possible. Had it been foreseen that new sets of rules would come into existence, it is reasonable to assume that the D.C. Courts would have been obligated to seriously consider their adoption also. The Court Study Committee is aware that in 1974-75 a Superior Court Committee, chaired by then Associate Judge John Penn, considered the adoption by the Superior Court of the Federal Rules of Evidence. That body voted not to recommend that the Superior Court adopt the federal evidence rules. Reasons given for this decision had to do with the degree of impact such rules would have on local practitioners, and the fact that further revision was anticipated in the rules of evidence area.

The Court Study Committee believes that the D.C. Court System should promptly develop and promulgate rules of evidence, modeled on the Federal Rules of Evidence. Not only has there now been several years of federal court experience with these rules, but a number of state court systems have adopted wuch approaches as well. Such action would promote more efficient adjudication, and a more uniform application of the principles of evidence in the D.C. Courts.

Recommendation: The Court Study Committee recommends that Rules of Evidence be adopted by the D.C. Court System, modeled on the Federal Rules of Evidence.

As the Court Study Committee's Reports on the Court and the Community and on the Civil Division of the Superior Court demonstrate, the Committee is not a doctrinaire adherent to the theory of having the same rules of procedure for all matters in both the D.C. Courts and the Federal Courts. We are concerned that the Superior Court has not wrought many imaginative variations on federal procedure, either: (1) to take advantage of the fact that it processes all stages of felony prosecutions in a single courthouse, with judges who are capable of entering judgment and sentence for any offense; or (2) to accommodate the lower rung of civil cases which are statutorily not small claims, but in which the expensive

litigative techniques of the Federal Rules are uneconomical, and may be abused by litigants with "deep pockets."⁵

The Federal Rules can only be a straightjacket for the Court, in such respects, so long as it allows them to be. Where its practice and caseload are significantly different from those of the U.S. District Courts, the D.C. Courts should feel free to adopt different modes of procedure.

E. Court Liaison with Legislative Bodies

Since the regular activities of legislative bodies often impact upon the judiciary of the District of Columbia, an active liaison should be established between the judiciary and these bodies. This liaison will ensure that the judiciary has sufficient notice of an input into those acts which will impact on judicial functions and resources. An active liaison participating at the earliest possible stages of acts or proposed changes will serve to avoid unnecessary and costly conflicts. (The reader is referred to a 1974 California Judicial Council Study, Guidelines for Determining the Impact of Legislation in the Courts, by Ralph Anderson and Associates, for further substantive explanation of the impact issue.)

During the course of preparing this report the Court Study committee learned of instances where close coordination

⁵ The Court Study Committee does acknowledge the useful examination of this subject area by a 1980-81 D.C. Judicial Conference Committee, and subsequently by a Superior Court Committee on Arbitration. The product of these efforts has been the introduction in 1981 of a voluntary arbitration program for cases of intermediate amount.

- 25 -

and dialogue between the Court and the D.C. Council was maintained such as with the 1980 probate reform legislation; and of instances where the D.C. Courts had insufficient foreknowledge of pending legislative acts as with the recent mental retardation amendments which may add as many as 1,000 new court prehearings each year to the Superior Court's existing workload. It seems obvious that there needs to be more systematic and ongoing communication between the Judicial and legislative branches of the District of Columbia Government.

Recommendation: The Court Study Committee recommends that an active liaison be established between the D.C. Court leadership and the D.C. Council and Congress, whose acts may affect the administration of justice.

SECTION III CHIEF JUDGE SELECTION AND ROTATION

Introduction

The thrust of this brief section addresses the methods for selecting chief judges and the issue of tenure and rotation of these positions.

The 1970 D.C. Court Reform Act changed both the system for selecting chief judges of the District of Columbia courts, and the term of a chief judge. Previously, the chief judges of both the Court of Appeals and the Court of General Sessions (as well as the Juvenile Court) were appointed as chief judges, for the statutory ten-year term of all judges of their courts, by the President of the United States with the advice and consent of the U.S. Senate.

The 1970 Act retained the salutary feature of having chief judges selected for the job, instead of merely surviving into it, as in the federal district and circuit courts. It "grandfathered" the two incumbent chiefs until the end of their ten-year terms, and provided that all successors would be designated by the President, from among the active judges of a court, for a term of four years. A chief judge who reached the statutory retirement age of 70 years would cease to serve as chief judge; and a chief judge who was not redesignated, or who resigned as chief without resigning from judicial office, would become an associate judge of the court. The Act also provided that a chief judge could continue in office

- 27 -

until a successor was designated, and could, if eligible, be redesignated.

Only one chief judge was selected under the 1970 Act, Chief Judge Reilly of the D.C. Court of Appeals, before the Act was substantially amended by the Home Rule Act of 1974.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973 (the Home Rule Act) retained all other features of the 1970 D.C. Court Reform Act, but transferred the power to select chief judges to a new D.C. Judicial Nomination Commission, created by the Home Rule Act for the principal purpose of nominating candidates for judicial service in the D.C. Courts. That Commission has acted four times to select a chief judge of either the Superior Court or the Court of Appeals.

By assigning the authority to pick chief judges to the D.C. Judicial Nomination Commission, the Congress transferred the power from the Federal Government to a District of Columbia entity composed by law of D.C. residents. It gave the power to the body whose basic, and only other, function is judicial selection for the local courts of the District of Columbia.

A. Selection Criteria

The Court Study Committee has examined the other methods used to select chief judges for American courts, and their terms of office. We have also considered an extensive, unpublished 1978 report produced by the D.C. Courts Committee

- 28 -

of Division 4 of the D.C. Bar, on the chief judge issue. Interviews have been conducted with a number of members of the D.C. Judicial Nomination Commission individually and with the Commission as a group. Additionally, the Committee solicited the views of several persons familiar with the selection processes utilized by judicial nomination commissions in other states. The Court Study Committee is persuaded that the selection of chief judges by the D.C. Judicial Nomination Commission is unsatisfactory and should be changed.

The principal reason for this conclusion is that the Commission, as a body completely external to the D.C. Courts, and one whose ongoing concern is the judicial potential of prospective judges, is inherently unsuited for the role of chief judge selection that the Home Rule Act asks it to play, pretty much ad hoc, from time to time. The job of chief judge is quite dissimilar from that of judge. The critical quality needed in a chief judge is a sense of administration. That includes both an ability to share power and to delegate responsibility to others, and a sense of when and how to exercise one's powers personally. The ability to lead, to influence and to motivate others is important in a chief judge, not only in his or her relationships with the other judges of the court, but also, and perhaps particularly, in his or her relationships with its non-judicial personnel.

Selecting chief judges resembles selecting judges only superficially. The D.C. Judicial Nomination Commission has no other responsibility for the management of the courts;

its members are not appointed for their management expertise; and it is subject to political factors, partisan and otherwise, that the Court Study Committee believes should be irrelevant to choosing chief judges. The Commission has an extraordinarily important function, that of submitting lists of candidates for judicial appointment to the President. That vital function should not be impaired as a result of the politics inherent in the quite dissimilar task of designating chief judges.

The Court Study Committee's conclusion is also suggested by the Commission's track record on designating chief judges. For reasons discussed elsewhere in this report, the Commission's basic function of selecting candidates for judicial appointments is necessarily often performed ad hoc, as vacancies occur. The Commission has not created mechanisms that would permit it to function on a more continuous basis, or even to anticipate vacancies which can readily be predicted. Unfortunately, the Commission has also handled the function of designating chief judges on an ad hoc basis. This was even moderately necessary for only one of the four designations it has made, that of the successor to Chief Judge Harold H. Greene when he was appointed to the federal bench. Even in that instance, the Commission could have started its work much earlier than it did. On the other occasions, involving terms that expired on dates that were known well in advance, the Commission began its chief judge selection process at the eleventh hour. Whatever the factors that made the Commission

- 30 -

adopt that mode of operation, it is not one that inspires confidence in the Commission as the appropriate body to exercise the power of choosing chief judges.

The Court Study Committee commends the D.C. Judicial Nomination Commission for taking the important procedural step in 1980 of setting forth for the first time a set of objective criteria by which candidates for chief judge will be evaluated. Criteria identified by the Commission include:

Administrative and managerial ability and experience;

Ability to secure financial and other support for the Court;

Ability to identify and address problems within the Court and in the general administration of justice in the District of Columbia;

Utilization of the private bar to assist in analyzing and addressing issues in court administration;

Ability to lead the Court so as to insure a quality product and an efficient operation;

Ability to promote a sense of cooperation among the associate judges and court staff, and assist in providing a sense of unified concerns within the Court.⁶

Recommendation: The Court Study Committee recommends that, each time a D.C. Courts chief judge is to be selected, the D.C. Judicial Nomination Commission publicly announce in advance the objective criteria by which all candidates for chief judge will be evaluated. Such criteria should include:

⁶ Letter from Frederick Abramson, et al., members of the D.C. Judicial Nomination Commission, to Theodore R. Newman, Jr., November 1980. (Letter written upon appointment of Chief Judge Newman to a second four-year term as Chief Judge of the D.C. Court of Appeals.)

- 31 -

- (a) Administrative and managerial ability and experience;
- (b) Ability to secure financial and other support for the Court;
- (c) Ability to identify and address problems within the Court and in the general administration of justice in the District of Columbia;
- (d) Utilization of the private bar to assist in analyzing and addressing issues in court administration;
- (e) Ability to lead the Court so as to insure a quality product and an efficient operation;
- (f) Ability to promote a sense of cooperation among the associate judges and court staff, and assist in providing a sense of unified concerns within the Court.

B. Selection Methods and Periodic Rotation

It has been suggested that the D.C. Judicial Disability and Tenure Commission would be a more appropriate body than the D.C. Judicial Nomination Commission to choose chief judges. The argument is that the Tenure Commission's functions involve it in the periodic review of the work of every District of Columbia judge, and that it is thus familiar with the qualifications of all the potential candidates for a chief judgeship. We find this argument unpersuasive. The Tenure Commission already has extraordinary power over D.C. judges. To give it still more would only exacerbate the tendency of the judges to view it as an Orwellian "big brother" watching them. Both Commissions are, moreover, equally external to the daily management of the judicial system.

- 32 -

The Court Study Committee believes the management of the D.C. Courts should be the responsibility of the Courts. This means that court management personnel, including chief judges, should be selected by the judges of the Courts they manage, not foisted upon them by someone else.⁷

This community has seen, in the early period of the new D.C. Court System, the unfortunate result of having a Court Executive Officer forced on the Court from outside. The D.C. Court System, from a budgetary perspective, is still living with the consequences of that confrontation. There should be no potential for the same thing to happen with

⁷ The American Bar Association Standards of Judicial Administration recommend that chief justices of state court systems should be either elected by the judges of the state's highest court, or appointed by the governor, and that the chief judges of all other courts in the system should be either appointed by the chief justice or elected by the judges of their own courts.

In 1973 the National Conference of Metropolitan Courts also adopted a set of Standards Relating to the Office of Chief Judge. The Conference (composed of the chief judges of all major metropolitan trial courts) recommended that a multi-division trial court should have a "deputy chief judge" and "a division presiding judge . . . to administer each subunit", §§ 1.1, 1.2, p. 5 (recommendations in which we concur). It recommends that both the chief judge and the deputy chief judge "should be selected by vote of [their] fellow judges," whereas "division presiding judge[s] should be appointed by the chief judge" §2, p. 7, and "serve at the pleasure of the chief judge." §3, p. 9. "The term of the chief judge should be for a specified period of time, not less than two years. He (or she) should be eligible to succeed himself [or herself]." Ibid.

We agree with every recommendation except the last, which we believe is likely - unless there is a strong tradition or presumption of periodic rotation - to make it difficult to remove a long-term incumbent, and is not necessary if a court has many judges, and thus many capable potential chief judges.

respect to the designation, or the removal by non-redesignation, of a chief judge.

The procedure of chief judge selection by judges of the same court has been used by many American courts for many years. It has been successful in some major metropolitan trial courts, including some of the best run courts in the Nation. It has demonstrably failed only in those state supreme courts that have rotated the chief justiceship every year, or so handled the matter as to insure that a justice who is up for partisan political re-election can run as chief justice. It has typically had the result of increasing the awareness of a court's judges to the fact that court management is the joint responsibility of all judges. Properly conducted -- under, for example, the rules of the Los Angeles County Superior Court -- such elections are not "popularity contests." Above all, such a selection process makes the judges the determiners of their own destiny.

Equally important with all judges' participating in the choice of their chief judge, the Court Study Committee believes, is the periodic rotation of the office of chief judge. Periodic rotation was forcefully advocated by a D.C. Bar Division 4 Committee on D.C. Courts, both in its earlier referenced 1978 Report on the Selection of Chief Judges and in a 1976 Report. That committee recommended that the chief judge of the Court of Appeals, as chief of the court system, should perhaps be limited to two four-year terms, and that

- 34 -

"the general rule" should be that the chief judge of the Superior Court "be designated to serve only one four-year term as chief." The Court Study Committee concurs that regular periodic rotation of judicial leadership in the D.C. Courts is appropriate, and is in the best long term interest of the administration of justice in the District of Columbia.

The earlier bar committee report also recommended that the D.C. Judicial Nomination Commission should, if possible, insure continuity by "naming a chief judge designate at least a year before the expiration of the term of an incumbent chief judge."

With regard to the D.C. Courts, the Court Study Committee favors an approach of advance designation of the chief judge. Experience to date with the D.C. Courts indicates that each of the judges newly selected to be chief judge had virtually no opportunity to prepare for the duties of chief judge before assuming the office.

With regard to the length of the term of a chief judge of either the Court of Appeals or the Superior Court, the Court Study Committee believes the issues, needs, and relative court system administrative positions of the Superior Court and the Court of Appeals are sufficiently varied as to warrant the possibility of different length terms for the chief judge of each court. An overriding premise or assumption for each of these vitally important leadership positions in the

D. C. Courts is that they should rotate with sufficient frequency that the entire bench accepts an affirmative responsibility for the management of their court.

In the instance of the D.C. Court of Appeals, the Committee, as discussed more fully in the separate sections of this report dealing with rule-making and with the Judicial Council, recommends that the D.C. Code be amended to place the Court of Appeals in a more truly supervisory role over the D.C. Court System. This thrust is consistent with the practice in virtually every other state court system, in the federal circuits, and in cognizant national standards for judicial administration. To execute this court system-level responsibility, the term of office of the D.C. Court of Appeals' chief judge necessarily should be long enough to discharge this important leadership function.

The Court Study Committee considered a number of chief judge rotational policies in use in other jurisdictions, and studied the experience of the District of Columbia Courts where rotation has been infrequent. We favor a policy whereby the chief judge of the Superior Court would be elected for a four year term with, in rare instances the possibility for election to an additional term. The chief judge of the Court of Appeals also would be elected for a four year term, but the presumption or expectation of a second term might be greater due to the system - wide administrative responsibilities of the appellate chief judge. At the same time, however,

where the remainder the bench believes an incumbent chief judge is not measuring up, in terms of criteria such as those set forth in the preceding subsection, the judges would have a duty to rotate a chief judges after a single four year term.

So long as the present statute remains unchanged and the power to designate chief judges remains with the D.C. Judicial Nomination Commission, the Commission should systematically and actively consult with the court well in advance as to the timing of its designations. It should take steps to avoid the last-minute designations that have characterized its work in the past.

The most important principles that should govern the system for selecting chief judges (aside from the obvious one of choosing competent people) are (1) that it should provide for periodic changes in the office, and (2) that the successor should be known well in advance, so that he or she can be prepared for the duties of the office.

Periodic changes in leadership are important to all institutions, not only because they insure energetic leadership and bring new blood and new ideas to management, but also because they institutionalize the concept that, as one judge said to us, "the chief judgeship should be viewed not as an honor, but as a burden." Unless the principle of regular change in the chief judgeship is established, it becomes increasingly difficult to unseat a chief judge who is no

- 37 -

longer up to the job, but whose fellow judges are loath to insult him or her by even suggesting that a change would be in order. Periodic change also should encourage the development of participation by all the courts' judges in the management of their court, especially if, as we favor, the choice of a new chief is theirs to make.

It is also important that each new chief judge be chosen long enough before taking office that he or she can participate in the process of establishing the court budgets for the years he or she will be in office, so that those budgets can enable him or her to implement new programs. (Some Courts have adopted a practice whereby the chief judge designate chairs the Court's budget committee.)

Until a statutory change in the Home Rule Act can be effected, the Court Study Committee urges the D.C. Judicial Nomination Commission to formally adopt a procedure of designating chief judges well in advance of the time they will take office.

Recommendation: The Court Study Committee recommends that Section 431(b) of P.L. 93-198, the "Home Rule Act," be amended to provide that the chief judge of a District of Columbia Court be elected by secret ballot by the judges of the court in regular active service from among their number, for a four year term. Procedures for conducting such elections should be set forth in Court Rules. The Court Study Committee strongly favors a policy of chief judge rotation every four years except in unusual circumstances.

SECTION IV JUDICIAL SELECTION

Introduction

The American Bar Association Standards relating to Court Organization state that, "Selecting competent judges is the most important aspect of establishing and maintaining an excellent court system" (emphasis added).^{*} The Court Study Committee fully subscribes to this position, and believes it is incumbent upon the District of Columbia legal community and others to do everything possible to assure the highest quality judiciary for the D.C. Courts. The procedure currently used to select judges for the D.C. Superior Court and the D.C. Court of Appeals consists of a seven member non-partisan D.C. Judicial Nomination Commission which recommends candidates to the President of the United States who nominates from among those recommended, and the U.S. Senate which confirms the nominees for judicial office.

Mayor Marion Barry has recommended legislation to the U.S. Congress to make certain fundamental changes in the judicial selection process, and a separate D.C. Bar Committee chaired by Fred M. Vinson, Jr., Esq. has prepared a detailed report on the Mayor's proposals. Because of the existence of the more detailed Vinson Committee Report the Court Study Committee will not comment specifically on the proposed legislative changes.

^{*} American Bar Association Commission on Standards of Judicial Administration. Standards Relating to Court Organization. Chicago, 1974, p. 43.

With regard to the appointment and confirmation process, the Home Rule Act requires the President of the United States to make a selection from the nominees submitted within 60 days. This period is used both for further detailed background checks on nominees, and for the consultation process which is a necessary part of the selection decision. The Court Study Committee is concerned that the time period is interpreted as meaning 60 legislative days and not 60 calendar days. The Committee feels strongly that the Office of the President should exercise the appointment decision without delay even if it means announcing the names and forwarding the selection to the U.S. Senate during a recess, or between sessions. The Committee is also concerned that while present legislation places specific time limits on the D.C. Judicial Nomination Commission, and on the President of the United States, no such time limits are placed on the U.S. Congress. It is important that the U.S. Senate move with appropriate speed in fulfilling its' statutory obligation of confirming judges to the D.C. Courts.

The discussion which follows addresses certain aspects of the existing judicial selection procedure used in the District of Columbia. Areas covered include the recommendation and nomination process, delays in appointing judges, qualification considerations for judicial appointment, and other matters. (The reader is referred to the Section Three

- 40 -

of this Court Organization Report for commentary and recommendations regarding the D.C. Judicial Nomination Commission's role in selecting the chief judges.)

A. Judicial Nomination and Appointment Process

The District of Columbia Self-Government and Government Reorganization Act of 1973 modified the judicial selection process for the D.C. Courts by creating a seven-member non-partisan nominating commission which recommends three candidates for each judicial vacancy. The U.S. Congress patterned the D.C. Judicial Nomination Commission after the so-called Missouri Plan of nominating judges on the basis of merit. In the area of designating the Judicial Nomination Commission membership the Congress also embodied an important principle of independence between the body that nominates the judge - the Chief Executive - and the body that recommends candidates for judicial office - the Judicial Nomination Commission. The method by which the independence of the Commission was provided was to allow the Chief Executive to appoint only one of the seven members of the Commission. By assuring that the Chief Executive exercises no control over who the nominations process recommends for judicial service the Congress allowed the D.C. Judicial Nomination Commission to concern itself with screening and recommending panels of judicial candidates principally on the basis of their perceived judicial qualifications, as distinguished from any other factors.

- 41 -

The Court Study Committee fully endorses the Congressionally enacted concept of merit selection of judges to the D.C. Courts by an independent non-partisan judicial nomination commission. The Committee commends the members of the D.C. Judicial Nomination Commission for the seriousness of purpose with which they have discharged their judicial nomination function since the creation of the Commission.

The Court Study Committee is concerned about any erosion of the independence of the D.C. Judicial Nomination Commission and forcefully urges the D.C. Council and U.S. Congress to preserve the separation of the judicial nominating function embodied in the Commission from the judicial selection and confirmation functions embodied in the Chief Executive and legislature respectively.

The D.C. Judicial Nomination Commission has seven members, all who must be D.C. residents, chosen by five different entities - the President of the United States (one member), the Board of Governors of the unified D.C. Bar (two members), the Mayor (two members, including one non-lawyer), the D.C. Council (one non-lawyer member), and the chief judge of the U.S. District Court (one judicial member in active or retired service in the District of Columbia.) The Committee supports the concept embodied in the Act of shared appointment authority for members of the Commission. The Committee also favors the proposition that a majority of the members of the Commission be residents of the District of Columbia, and that the legal, judicial and lay communities be represented.

- 42 -

With regard to the judicial member of the D.C. Judicial Nomination Commission the Committee was repeatedly informed of the valuable insights such a resource has been to Commission members as they have performed their functions. The practical insight and experience of a judge appears to have added a valuable dimension to the Commission's work. The Court Study Committee has specifically examined the continued appropriateness of a federal judge sitting on the Commission and for a host of reasons, ranging from the geographical compactness of the District of Columbia, to the size of the local court system, concludes that it is preferable to retain a federal judge as the judicial member. The Committee does believe the existing D.C. residency requirement should not apply to the judicial member of the Commission because it both unduly restricts the pool of "eligibles" from which the U.S. District Court chief judge can select, and further is not material to the reason why a judge is on the Commission. At the same time, however, the Court Study Committee believes that the U.S. District Court chief judge should make every effort to select a federal judge for the D.C. Judicial Nomination Commission who has direct experience in and knowledge of the District of Columbia Courts.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that the judicial member of the D.C. Judicial Nomination Commission may be selected without regard to residency in the District of Columbia. Judges with substantial demonstrated knowledge of, and experience with the District

- 43 -

of Columbia Courts, either as counsel or judge, should be given major consideration when selecting the judicial member of the Commission.

Another judicial nominating process issue identified by the Court Study Committee concerns the time allowed under the statute for the D.C. Judicial Nomination Commission to perform the nomination function. Currently the Commission is required to nominate candidates within 30 days of the occurrence of a vacancy, except in vacancies brought about as a result of a judge reaching the mandatory retirement age. In the latter instance the Commission must act no later than 30 days before the retiring judge's date of mandatory retirement.

The Court Study Committee has concern about the adequacy of the screening and recommendation process performed within the existing 30 day authorized period. While the Committee is troubled by the average overall time the judicial nominating, appointing and confirmation process has taken in the District of Columbia, it is critical that the D.C. Judicial Nomination Commission be able to conduct its functions competently and not under an artificial time pressure. Concern was expressed repeatedly in interviews conducted by the Committee as to the adequacy of the 30 day period to perform the judicial nomination function. A period of 60 days to complete this task would appear more reasonable. With regard to judicial vacancies arising from mandatory retirements there seems no reason why the Judicial Nomination Commission should not

adopt a uniform policy of submitting candidates to the President of the United States 120 to 180 days before the vacancy will occur.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide up to 60 days for the D.C. Judicial Nomination Commission to nominate candidates for vacancies on the D.C. Courts.

Recommendation: The Court Study Committee recommends the D.C. Judicial Nomination Commission adopt a written policy of submitting names of judicial candidates to the President for vacancies caused by the mandatory retirement of a judge not less than 180 days prior to the effective retirement date.

Additionally, the D.C. Council and U.S. Congress may wish to provide for the interim appointment of D.C. Court judges when the selection occurs between Congressional sessions, or during a recess. Such appointments to the D.C. Courts, good until the end of the next session of the U.S. Senate, appear clearly legal under the 1970 D.C. Court Reform Act, and under prior legislation, pursuant to the President's recess-appointment power. It is somewhat ironical that the 1974 Home Rule Act apparently eliminated that power, because that Act requires the appointment of candidates screened by the D.C. Judicial Nomination Commission. It thus appears that the very statute that all but eliminated the likelihood of bad Presidential recess appointments, simultaneously eliminated the power to make such appointments.

We express no view on the constitutionality or advisability of recess appointments to the federal Article III

courts. Different considerations apply to Article I courts. We urge that the Home Rule Charter be amended to prevent long delays in filling D.C. judgeships.

Recommendation: The Court Study Committee recommends that consideration be given by the U.S. Congress and the D.C. Council to amending the D.C. Code to provide for interim judicial appointments to the D.C. Courts when the Chief Executive's nomination is made during a Congressional recess or between sessions.

B. Delays in the Appointment Process

A number of interviews conducted by the Court Study Committee expressed serious concern about the length of time required from the time vacancies occur on the D.C. Courts to the time new appointees begin judicial service. Accurate data as to the average time the entire process requires was not available to the Committee, but estimates offered ranged from six to nine months before many vacancies in the past have been filled and judicial service begun. The existing statute does not appear defective in this regard except as to the Senatorial confirmation end of the cycle. While it does not appear useful to recommend a statutory time period within which the legislature must complete the confirmation process, it is important for the U.S. Senate to complete its responsibilities in this area with dispatch. In this regard it may help if the Congress has full access to the investigative, candidate questionnaire and other related documents formally available to the Office of the President. In this manner the confirmation function may be able to be completed sooner.

C. Administrative and Policy Issues in Judicial Selection

While a host of administrative and policy issues were identified by the Court Study Committee in the judicial selection area, a few warrant discussion in this report. The first issue concerns the access an applicant for judicial office has to information generated in the course of the D.C. Judicial Nomination Commission's consideration of his or her candidacy. At present other D.C. Council-enacted legislation leaves unclear the applicability of freedom-of-information and other similar acts to the procedures and activities of the D.C. Judicial Nomination Commission. While the Committee recognizes the potential danger in restricting access, at the same time ample indication was offered in the interviews as to the "chilling" effect the current procedure has on the forthrightness and candor of those persons whose views are being sought about a given candidate.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to restrict access to materials furnished to or developed by the D.C. Judicial Nomination Commission.

A related issue is whether any "Sunshine" laws or regulations of the District Government should apply to the D.C. Judicial Nomination Commission. In the District of Columbia, the judicial selection process entails three distinct levels of review. The D.C. Judicial Nomination Commission represents the initial screening level of prospective candidates, the President of the United States represents the

- 47 -

second review level, and the U.S. Senate is the final review through the confirmation process. Secrecy of proceedings and deliberation at the first stage -- i.e. the Judicial Nomination Commission -- we believe better assures potential judicial candidates, and those who hold material views about the suitability of such candidates, that their representations will be considered in the proper context, and in turn not become public. The time for full public scrutiny of candidates is when the President is considering the three recommended candidates of the Nomination Commission and not before. Therefore, the Court Study Committee believes the proceedings of the Commission must be conducted out of the public eye in order to assure that frank and open submissions are received by the Commission and that open exchange occur within the Commission. It is of paramount importance that the candidates recommended by the Commission meet the highest possible standards, and that the Commission's deliberations not be impaired unnecessarily.

Recommendation: The Court Study Committee recommends that the D.C. Code be made clear so as to exempt the D.C. Judicial Nomination Commission from the requirement to hold public meetings.

The Committee recognizes the value of broader public knowledge of the decisions and workings of the D.C. Judicial Nomination Commission. In that regard we would favor adoption of a policy whereby the formal judicial candidate recommendations of the Commission to the President are publicly announced

- 48 -

at the time they are submitted to the Chief Executive. This action would provide persons with knowledge or views about individual nominees ample opportunity to forward their views to the President at the time the selection decision is being considered.

The Court Study Committee would also note the positive value the public receives from regular periodic reports on the work of bodies such as the D.C. Judicial Nomination Commission. (The Committee found the D.C. Tenure and Disability Commission annual reports highly informative and useful, and favors a similar product being produced by the D.C. Judicial Nomination Commission.) Published annual reports are an effective vehicle which the D.C. Judicial Nomination Commission should seriously consider developing.

Recommendation: The Court Study Committee recommends that a policy be adopted whereby the judicial candidate recommendations of the D.C. Judicial Nomination Commission to the President are announced publicly at the time they are forwarded to the President. Should legislation be required to implement this recommendation, it should be enacted, and in the interim the Office of the President should adopt a practice of releasing publicly the list of candidates it has received from the Commission.

Recommendation: The Court Study Committee recommends that an annual report of the D.C. Judicial Nomination Commission be published to inform the public of the activities and functions of the Commission.

The D.C. Judicial Nomination Commission, as noted earlier in this section, has 30 days from the time a vacancy occurs to the time when it must forward its list of candidates

to the President. The Court Study Committee recognizes the difficulties in maintaining an active list of potential candidates for judicial office in the D.C. Courts. At the same time the Committee is deeply concerned that the D.C. Judicial Nomination Commission does not appear to have appreciated fully the importance of seeing its potential judicial candidate identification role as an ongoing one, as opposed to an intermittent one.

An additional issue regarding the judicial nomination process concerns the existing statutory prohibition about having the same name appear on more than one list of nominated judicial candidates before the President. When the D.C. Judicial Nomination Commission sends three names to the president and the President nominates one, there is usually a considerable period of time before the nominee actually takes office as a judge. During that period if there is then another vacancy, the Commission is not able to use the unused names in making its recommendations for the second vacancy since the statute prohibits having the same name on more than one list. The Court Study Committee believes that it is unfortunate to have the two unselected candidates held in limbo for substantial periods when in many cases the Commission, knowing that a person had not been nominated by the President, would like to make them part of its candidates for a subsequent vacancy.

- 50 -

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to allow the D.C. Judicial Nomination Commission to include among those recommended for judicial vacancies persons previously recommended but not selected by the President.

The Court Study Committee was informed in the course of its research that the D.C. Judicial Nomination Commission lacks adequate access to potentially pertinent information in the possession of the Judicial Tenure and Disability Commission. Such disciplinary or fitness information about active D. C. Courts judges who may be under consideration for selection to the Court of Appeals, or for selection as a chief judge may be very important to the D.C. Judicial Nomination Commission in discharging its duties competently.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to authorize the D.C. Judicial Disability and Tenure Commission, in its discretion, to disclose to the D.C. Judicial Nomination Commission information which it may possess relating to any judge under consideration by the Commission for elevation to the Court of Appeals or to the office of chief judge.

D. Judicial Selection Qualification Consideration

The Court Study Committee was unable to locate any adopted policies, standards or criteria used by the D.C. Judicial Nomination Commission or the President in screening and selecting candidates for judicial service in the D.C. Courts. Reference was made in the interviews to such implicit criteria as trial experience, legal scholarship, industry, integrity and other factors. The Committee believes the

- 51 -

Commission has a responsibility to articulate the major factors it deems important in considering attorneys for judicial nomination. Such criteria should be differentiated as to the Superior Court and the Court of Appeals in terms of certain factors. Additionally, the Committee favors including such criteria in published annual reports of the Commission, and in the periodic transmittal letters to the President when they forward candidates' names. The Committee is particularly sensitive to the importance of all candidates for judicial appointment to the D.C. Courts being evaluated as to their knowledge of and experience with areas for which the courts have responsibility. Additionally, affirmative assurances should be obtained from all candidates as to their willingness to being assigned periodically anywhere within the Court.

Recommendation: The Court Study Committee recommends that the D.C. Judicial Nomination Commission develop and promulgate criteria used to screen attorneys for possible judicial nomination.

The Court Study Committee also considered the existing statutory requirement that nominees for appointment to the D.C. Courts must be residents of the District of Columbia. The Committee's concern relates to the effect of this existing provision on the pool of potential candidates for nomination. While the Committee fully supports the underlying objectives which the existing statutory language addresses the overriding concern must be to assure the highest quality judiciary.

A related consideration to the D.C. residency matter is the present statutory requirement of residency before one is eligible to be considered for judicial nomination. It may be worthwhile to amend the D.C. Code maintaining the requirement that D.C. Courts judges reside in the District of Columbia once they are appointed and confirmed, but removing the existing requirement for residency in order to be eligible for consideration for judicial appointment to the D.C. Courts.

SECTION V TENURE AND DISABILITY

Introduction

The D.C. Commission on Judicial Disabilities and Tenure was created as part of the 1970 D.C. Court Reform Act. The Commission's jurisdiction extends to all active and retired judges of the District of Columbia Superior Court and the District of Columbia Court of Appeals. The D.C. Home Rule Act enlarged the Commission's jurisdiction so that it now includes the areas of:

- (1) a judge's conduct warranting disciplinary action;
- (2) involuntary retirement of a judge for reasons of health;
- (3) evaluation of a judge at the conclusion of his or her term to determine fitness for reappointment.

The focus of this brief section on the D.C. Commission on Disabilities and Tenure is a limited review of the Commission's make-up, and discussion of some of the procedures and statutory policies under which the Commission operates, together with recommendations.

A. Commission Make-up

By statute the Commission on Disabilities and Tenure consists of seven members, each of whom must be a D.C. resident. The seven members include one appointed by the President, two appointed by the Mayor, one of whom shall not be a lawyer, one appointed by the District of Columbia Council who shall not be

a lawyer, two appointed by the Board of Governors of the D.C. Bar, and one active or retired Federal judge appointed by the chief judge of the U.S. District Court.

Interviews conducted by the Court Study Committee regarding the make-up and work of the Commission reveal agreement and support of the value of a judge's presence, and the utility of lay involvement in the Commission process. Concern was voiced about the continued appropriateness of a Federal judge on the Disabilities and Tenure Commission. An additional concern in this regard, of a far greater merit to the Committee, is the need for the judicial voice on the Disabilities and Tenure Commission to be someone who has a direct and intimate understanding of the demands placed on local trial court judges on a day-to-day basis.

A related concern of the Court Study Committee was the appropriateness of the President of the United States choosing one of the members of this D.C. Commission whose authority extends solely over local D.C. judges. The Court Study Committee is cognizant that the Board of Governors of the D.C. Bar appointed a special ad hoc committee chaired by Fred M. Vinson, Jr., Esq. specifically to study and consider the pending legislative proposal of the Mayor of the District of Columbia regarding certain changes in the selection and retention of D.C. judges as well as other areas. The Court Study Committee therefore defers making any specific recommendation about the Presidential appointment of one member of the Commission.

B. Statutory Procedures

1. Reappointment Timing

The existing statute under which the D.C. Judicial Disabilities and Tenure Commission functions requires D.C. judges who wish reappointment to so notify the Commission within 90 days of the expiration of their term of office. The statute further provides that the Commission must file its public report with the President no less than 30 days before the judge's term expires. By all accounts, including a review of each of the Commission's Annual Reports, the 90-day notice period is insufficient to enable the Commission to conduct its investigations and formulate a Commission recommendation on a sitting judge. This situation is particularly exacerbating when several judges come up for reappointment at the same time. One estimate is that the Commission will handle an average of slightly more than three reappointments each year.

D.C. judges who seek reappointment are asked by the Commission to declare their intentions six months before their terms expire. Many judges who have gone through the reappointment process have voluntarily assisted the Commission in this regard.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to require judges eligible for reappointment to formally notify the D.C. Commission on Judicial Disabilities and Tenure as to their plans regarding an additional judicial term 180 days before their terms expire. The statute also should be amended to provide

- 56 -

that the Commission must file its report with the President at least 60 days prior to the expiration of a judge's term. In the interest of fairness to the judge affected, and to the community, the nominating and confirming authorities should also be required to act with reasonable dispatch.

2. Evaluation Standards for Reappointing Judges

The Act requires that the D.C. Commission on Judicial Disabilities and Tenure in its report to the President include "a written evaluation of the declaring candidate's performance during his term of office." The Act further sets forth four categories into which judges are to be placed. The categories relate to the reappointment process used. Where the judge is ranked by the Commission as "exceptionally well qualified" or "well qualified," the judge is automatically appointed for a new 15-year term. Where the judge is ranked "qualified" by the Commission, the President may, in his or her discretion, choose to renominate the judge for an additional term subject to U.S. Senate confirmation. If the judge is ranked "unqualified" by the Commission, he or she is ineligible for reappointment.

A brief review of the Commission's rankings and policies over the past several years reveals a very conscientious effort to reserve to a very small percentage of the bench the top evaluation of "exceptionally well qualified," when applied to trial court judges. A diligent attempt appears to have been made to keep such rankings to ten percent or less of the trial bench.

At the appellate court level the experience has been quite different in the reappointment rankings given judges. Virtually every appellate judge to date who has sought reappointment has been rated "exceptionally well qualified." The reason appears to be the relative difficulty of assessing deportment, industry and demeanor of appellate judges, as opposed to the trial bench, where judges are constantly "in the public eye."

The Court Study Committee finds little value in retaining the two automatic reappointment categories for evaluating judges' performance, and further notes that the publicly released letter from the Tenure Commission appears to offer the judge and the public ample evidence of the judge's areas of strength.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to delete the judicial reappointment evaluation category of "exceptionally well qualified."

3. Retired Judge Review

Currently the D.C. Commission on Judicial Disabilities and Tenure has the same basic authority over all D.C. judges serving on the bench, whether a judge is retired or on active service. However, once a judge retires, even when he or she continues to sit on the bench, the Commission ceases to periodically review the judge's fitness to serve, in the same way that the Commission is charged to do for all active judges prior to their being reappointed for an additional term.

In the D.C. Courts, retired or Senior Status judges who continue to sit on the bench do so at the discretion of the chief judge of their court. Senior Status judges occupying these positions act as judges on the basis of statutorily granted judicial power just as with all other D.C. judges.

It is the position of the Court Study Committee that Senior Status judges who continue to sit full or part time on the bench are a valuable resource to this community. However, the Committee also concludes that periodic review of Senior Status judges by the D.C. Commission on Judicial Disabilities and Tenure will provide a needed independent and public determination of a judge's capacity for continued full and effective service.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that any judge voluntarily retiring from the D.C. Courts who wishes to continue in judicial service in a Senior Judge capacity be reviewed by the D.C. Commission on Judicial Disabilities and Tenure at the time of retirement and every five years thereafter as to his or her continuing capacity to serve. The D.C. Code should provide that judges over seventy years of age be reviewed in a similar manner by the Commission every three years. It is suggested that an evaluation standard such as the existing "cause for concern" provision be used in this area by the Commission.

4. Grounds for Removal Provision

The existing statute provides with regard to the Commission taking action of a disciplinary nature that there must be "grounds for removal." The Commission has taken the

position since its inception that it also has the authority to discipline judges short of removal. The Commission's viewpoint in this general area appears to have been supported in the U.S. District Court decision of Halleck v. Berliner.

C. Role of the Bar in the Reappointment Process

A review of the annual reports of the Tenure and Disability Commission suggests the important role the bar can play in the reappointment of judges. Canon 8 of the Code of Professional Responsibility states that lawyers have a special responsibility to aid in the process in which the Commission is engaged.

One of the areas of organized bar involvement with the Commission's judicial reappointment work which bears attention is the timing of the Bar's reports to the Commission and the judge. It was repeatedly emphasized in interviews the Committee conducted with Commission member and others that the earlier the bar judicial evaluation reports are available to the Commission the more assistance and utility they possess for the Commission, which appears to be destined to be always short of staff and investigative resources.

It should also be noted that since the 1970 D.C. Court Reform Act virtually every judge eligible for reappointment to the D.C. Courts at least initially has filed for reappointment.

Recommendation: The Court Study Committee recommends that the Judicial Evaluation Committee of the D.C. Bar, as well as other groups performing a similar function, complete

- 60 -

its investigations and report on any judge
who is likely to seek reappointment at le st
90 days prior to the date the judge must
declare his or her candidacy for reappointment.

SECTION VI SUPERIOR COURT MANAGEMENT STRUCTURE

The 1970 D.C. Court Reform Act mandates no particular overall management structure for the Superior Court except a chief judge, a clerk of court, and an executive officer whose functions are related to the D.C. Court System. (The two trial court associate-judge members of the Joint Committee on Judicial Administration are part of the management of the D.C. Court System, not of the Superior Court per se.) The Act gives the chief judge the power to assign judges to the various divisions and branches of the Court, and prescribes no judicial assistants to the chief judge.

A. The Administrative Judge

Chief Judge H. Carl Moultrie I, upon becoming Chief Judge in 1978, discerned that a court as large and complex as the D.C. Superior Court is beyond the "span of control" of a single, unassisted chief judge. He used his statutory power in September 1978 to "assign" one associate judge to each of the divisions of the Court to act as administrative judge, or assistant chief judge, of that division. This was a highly useful and salutary step. To a very real degree the Court no longer consists of "one chief and forty-three Indians," but rather has an organizational arrangement where many day-to-day judicial administration decisions are made at the level most affected -- the individual divisions of the Court. It appears at this point, with more than three successful years' experience with the administrative judge concept, that it would be

useful for the Court to go further to define the duties and authority of these positions.

The Court Study Committee recently issued a major report in the juvenile delinquency and child neglect areas. With regard to the divisional administrative judge issue, the Committee concluded in that report that it was now timely for further refinement of the concept to take place.

Particular attention was directed in the juvenile and child neglect report to offering the chief judge suggested additional functions or responsibility areas for the administrative judge position. The principal conclusion of the Court Study Committee in that context, which has application across all divisions of the D.C. Superior Court, was that the full potential of the administrative judge concept would not be realized until the judges in those positions were given a more formal charter from the chief judge, setting forth the authority and general duties of administrative judges. (The reader is referred to Section IV-C: The Family Division Judiciary, of the Juvenile and Child Neglect Report, for further detail in this area.)

The Court Study Committee would note one other potential benefit of the administrative judge concept as first developed under the leadership of Chief Judge Moultrie. Up until this procedural reform the D.C. Judicial Nomination Commission, in considering candidates for the office of chief judge of the Superior Court, lacked any empirical information as to a judge's capacity for performing the often difficult judicial

- 63 -

administration duties which make up a large part of the chief judge's work. While a trial judge's judicial industry, temperament and demeanor may be important elements for successful elevation to the chief judgeship, the D.C. Judicial Nomination Commission now has access to much more relevant data about the judicial administration capability of those judges who have served as divisional administrative judges.

Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court set forth in writing the major duties and authority of the divisional administrative judges. The Office of the Court, Executive and/or the Clerk of the Superior Court and of the subordinate divisions of the Court should be charged by the chief judge with providing administrative support in connection with duties of the administrative judges.

The Court Study Committee fully supports the thrust of the incumbent chief judge of providing a level of stability in the administrative judge position. It would appear useful, however, to note that while these positions serve as focal points for divisional issues, they also represent a considerable burden on those carrying the office.

B. Judicial Rotation

Most individual judges' assignments within the D.C. Superior Court and in the predecessor Court of General Sessions in the mid-to-late 1960's rotated on a monthly basis, up to September 1978. The chief judge of the Court of General Sessions issued a new list of judicial assignments every four, or sometimes, five weeks deploying judges to and within the various branches of the court. Judges occasionally were held

- 64 -

over to complete long trials, but that Court's limited jurisdiction produced few of them. The monthly list, usually published on the Thursday or Friday before it became effective, was a fairly efficient device for disbursing the court's workload, and for putting individual judges where they could do the most good, or the least mischief, according to their talents.

It was readily obvious, however, that the wholesale monthly shuffle of judges would not work for a court of general jurisdiction, the D.C. Superior Court. Chief Judge Harold H. Greene quickly established a so-called "individual calendar" system for judges in the Felony Branch, and later expanded the system to "Civil I" cases.* Chief Judge H. Carl Moultrie expanded this concept further when he became Chief Judge in 1978, and extended most division and branch assignments to three months. Both chief judges have assigned individual judges to other branches for longer terms, particularly to the Calendar Control courtrooms of the master-calendar system. The monthly period of changeover has been retained in a number of areas, however, particularly for the statutory branches

* The Superior Court's individual calendars are "so-called" because a case is not assigned to a single judge permanently, as in a "true" individual calendar (except when it remains assigned to the judge, for dispositional purposes, after trial or hearing). Each individual calendar in the Superior Court resembles a pool of cases, assigned to the judge for a period of time, during which the judge takes out as many cases as he or she can, and new ones are added; at the end of the assignment, the pool is passed on to a new judge, who repeats the process.

(Small Claims, Landlord and Tenant) and other mass-production courts (Traffic, Criminal Arraignment).

It has been suggested that the Superior Court should shift to a true individual calendar system for all cases except those in the statutory and mass-production branches. Indeed, a recent major multi-jurisdictional research study on trial court delay found that individual calendar court jurisdictions on the whole process cases significantly faster than master calendar trial court jurisdictions.¹⁰ It has also been objected that individual and master systems are fundamentally inconsistent, and that an individual calendar system cannot be made to work in a court whose jurisdiction includes small claims as well as multimillion-dollar civil cases, and minor violations as well as serious felonies. The argument is made that a judge cannot run an individual calendar if he or she has to take a month in small claims.

While the objection may have merit, the Court Study Committee can find no merit in the assumption that assignments to the special courts must be for a month, or that they must interfere with the judge's responsibilities in an individual calendar system. The special-court assignments can, and should, be made shorter and the Court Study Committee has so recommended in its earlier Statutory Courts Report. The question is how to shorten and integrate these assignments with

¹⁰ Church, Thomas, Jr. et al. Justice Delayed: The Pace of Litigation in Urban Trial Courts. (Williamsburg, Va.) 1978.

- 66 -

the assignments that involve the processing of larger pieces of litigation. We believe that such integration can be accomplished in several ways, either with the present system of assigning judges to divisions of the Court, or with a pure individual calendar system. The key to such integration is that the special-court assignment must be known to the individual-calendar judge well in advance, and sufficiently short, that the judge can calendar around it (inevitable "preliminary matters" related to the individual calendar can be fitted into the special-court day). (In a master calendar, whether Judge X is in Civil II, and Judge Y in Small Claims, or vice versa, is unimportant.)

The Court Study Committee believes that a system of fixed rotation of short special-court assignments would benefit the administration of justice in several ways. One is that it would include, in such assignments, the judges now assigned to individual calendars of major cases, who hypothetically include the court's better judges. Litigants in what Justice Harlan called "peewee" cases are entitled to their share of the best judges available; indeed, that principle permeates the 1970 D.C. Court Reform Act. It would also produce a more just allocation, among the judges, of what are unquestionably the most onerous judging jobs in the Superior Court. And it would do so without taking any judge away from other duties for extended periods of time.

The Court Study Committee believes that a rotation system could be most effectively and equitably managed by one-day assignments to the special courts, on weekly or bi-weekly rotations among a group of judges. It may be that one-week assignments would be preferable. Experimentation with both forms could be undertaken, but a general system of assignments that would accommodate such experiments is necessary.

As noted above the Court Study Committee, in a separate report on the statutory courts -- small claims, traffic, and landlord and tenant -- examined the length of judicial assignment issue, and concluded that judges in these positions should be rotated at least weekly. (The Committee also noted as to the small claims area, that a recent national study found that D.C. Superior Court judges are assigned to Small Claims Court for longer periods than those of the other 15 jurisdictions examined.)

Two overall systems of assigning judges would appear to accommodate such assignments. One, as already suggested, is a pure individual calendar system, in which each judge receives, by lot, a cross-section of the court's filings -- civil, criminal, family and fiduciary. We are not yet prepared to recommend such a system for the Superior Court; we only observe that it need not be inconsistent with maintaining the special courts or with the size and complexity of the Court. The second such system would be one in which a group of judges

- 68 -

would be primarily assigned to one division of the Court for an extended period of time -- six months to a year -- and the special-court responsibilities of that Division would be divided among them. Whether, for such purposes, juvenile and domestic cases are considered "Family" cases or divided between "Criminal" and "Civil" judges, is not critical. Arguments could be made either way. As the federal district courts have demonstrated, a trial court's divisions are administrative units, not judicial ones.

One principle that should govern the assignment of judges in a court of many judges is stability, and predictability. A judge can function more effectively if he or she knows what the predictable future holds, and can settle down to doing it. The theory that rotating judges from one sort of work to another keeps them from growing stale has merit only if the periods of each assignment are long enough to encourage them to develop expertise. Another purpose of the 1970 D.C. Court Reform Act provision in this area is to allow the chief judge to make optimum use of the expertise of the Superior Court's judges. The Los Angeles County Superior Court has a system of annual Division assignments, partly forced upon it by a multi-court-house physical plant. We believe that a trial court that operates on a basis of divisional assignments (necessarily using either master calendars or a modified individual-calendar system) should not change a judge's basic divisional assignment more often than once a year except as required by unforeseeable calendar problems.

- 69 -

Such a system also produces, in each division, a group of judges who are, for the period of their assignment to that division, a smaller group than the full court, with a common working purpose. A few such smaller groups of judges, once established for a period of months, should be able to work together more effectively than the single, somewhat unmanageable group of 44 judges that comprises the full Court. Both singly, and as groups, the judges will be able to concentrate on the particular problems of their divisions' work, and to devise solutions for those problems. Each judge should have a greater commitment to the work of his or her division than can develop in a more temporary assignment to a single branch of a division.

In such a system of divisional assignments, the Court Study Committee believes the assignment of judges within the division should be the responsibility of that division's administrative judge. As already noted, this could encompass a number of experiments in the staffing of the special courts within the division.

Recommendation: The Court Study Committee recommends that judges be assigned to a major division of the Superior Court for one-year periods.

C. Committee Structure

Both on a divisional basis, and between divisions, the Superior Court has an obvious need for an ongoing committee structure. While such a structure now exists, the Court Study

- 70 -

Committee was unable to learn what standing and ad hoc committees the Court has, or what judges serve on, or chair, what committees. (Membership on the Superior Court Rules Committee and its advisory committees is known, and can be found in the front of the Court's published Rules of Procedure.)

That the Superior Court has been unable to provide this information to the D.C. Court Study Committee is not, however, the point; far more important is the fact that the Court's committees are unknown to the public and the bar at large. The average lawyer or citizen with a suggestion, or a complaint, about a particular area of Superior Court operations should be able readily to ascertain the identity of the group of judges supposedly responsible for studying or improving that area. That this cannot be ascertained even by a high-level committee of the Bar suggests that the Court's committees, if they exist, are not part of the real management of the Superior Court. They appear to be used only as and when the chief judge sees fit to refer matters to them.

The Court Study Committee examined this area in an earlier report on the Court and the Community. In that regard, recommendations were offered suggesting that the D.C. Courts' Annual Reports include both a listing of the Courts' committees and their members, and a brief narrative report from judges responsible for the principal committees.

It has generally been true that the Superior Court's most effective committees have been well publicized ad hoc groups that include members of the bar and the public. One

- 71 -

reason for this phenomenon is probably that such committees' members receive comments from others outside the court. The other committees tend to operate without substantial outside input.

Section 2.36 of the ABA Standards Relating to Trial Courts recommends that a trial court " . . . establish such committees, to be appointed by the presiding judge, as may be useful to establish policy and to consult with the presiding judge and other judges exercising administrative authority." The Commentary thereto adds that "[a]n effective system of committees . . . provides a necessary connection between policy-making, which is the responsibility of the court as a whole, and administration, which is the responsibility of the . . . judges serving in an administrative capacity." Because the Court Study Committee has been unable to ascertain the Court's committee system, we cannot comment on the adequacy of its coverage. (The ABA Commentary lists eleven "matters" on which committees "may be useful": rules of court, caseload management procedures, budget and finance policy, legislation, personnel policy, building planning, jury instructions, relations with the bar, continuing education, sentencing, and general policy.) We can state, however, that the Superior Court's committee system obviously is not comprehensive or effective. It is not a working system. It thus gives little assistance to the chief judge.

- 72 -

One result of this lack of an effective committee system is the concentration of responsibility for court administration in the chief judge -- or perhaps the court's lack of committee structure is a symptom of that concentration of responsibility. That means, inevitably, that information about court problems (or successes) cannot move as it should. There being only one point to which information can flow, the chief judge's chambers, a bottleneck effect inevitably develops. Matters do not come to the chief's attention because they cannot get through, and no one else's attention counts.

As noted earlier, the bottleneck effect in the Superior Court has been somewhat alleviated by the creation of division administrative judges, but further improvement remains necessary.

Recommendation: The Court Study Committee recommends that the Superior Court Chief Judge maintain and utilize a system of Court committees, including such areas as generally set forth in the ABA Standards Relating to Trial Courts. Periodic reports of the work and membership of such committees should appear in the D.C. Courts Annual Reports.

SECTION VII JUDICIAL RESOURCE NEEDS

Introduction

While the Court Study Committee examined the judicial resource issue in a number of specific subject areas notably the family law, probate, fiduciary and tax, and appeal court reports for a number of reasons cited below the Committee is unable to arrive at a definitive overall position on this important subject. All indications, however do point to a growing problem of judges being faced with continuously heavy caseload demands with little if any relief in sight.

A. Court of Appeals

At the Court of Appeals level the Court Study Committee recommended in an earlier report that the Court be temporarily expanded by three judges to afford an opportunity to more rapidly reduce the existing backlog. (The number three was chosen as it represents the size of an appellate panel - the vehicle used most prevalently to hear and decide cases in the Court of Appeals.)

B. Superior Court

One of the questions most frequently raised about the new court system created by the 1970 D.C. Court Reform Act is whether the Superior Court has enough judges to handle its caseload. The Court Study Committee finds itself unable to offer a definitive quantitative answer to that question, for several reasons.

- 74 -

First, the Committee could locate no "benchmark" data or objective bases used to calculate the number of judges established by the Act. This means that no similar calculations, comparing now with then, are possible. The original 1969 U.S. Department of Justice Court Reorganization Bill, S.2069, proposed 50 judges for the D.C. trial court. The legislative history provides no firmer basis either for the adoption of that number by the U.S. Senate, for the lower figure of 40 judges adopted by the U.S. House of Representatives, or for the final Conference Committee compromise and legislative enactment of 44 judges.

Second, the Court Study Committee has been unable to find comparable data for other metropolitan courts that could form the basis for a firm conclusion. Many jurisdictions have local trial court systems that include substantial suburbs (e.g., Cleveland is only part of Cuyahoga County, Ohio). None has a unified trial court with jurisdiction equivalent to that of the D.C. Superior Court. This in turn makes cross-city comparisons almost impossible.

Baltimore City is perhaps most similar to the District of Columbia. It has twenty-two circuit judges (Supreme Bench of Baltimore City), twenty-two district judges, and three judges of the Orphans' Court, for a total of forty-seven active judges, plus one retired circuit judge and one retired district judge. But Baltimore's district judges do not sit in a single courthouse, let alone in the same courthouse, or on

the same court, with the Supreme Bench. The system there is both administratively and geographically fragmented, and does not provide for the temporary transfer of judges to meet case-processing emergencies. If one can assume that the judicial complement in Baltimore is adequate to the needs of that city, then comparison with Baltimore, rough at best, suggests that the District of Columbia Superior Court has close to the right number of trial judges, if they are properly deployed.

The short history of the D.C. Superior Court does not provide an adequate basis for determining whether, properly supported and deployed, the Court's 44 judges are adequate for its workload.

The Superior Court assumed full local general jurisdiction in 1973, which provides some seven years of experience for evaluation. During the first five years, however, the Superior Court was housed in six separate buildings, two of which were not designed for court operations. The Court made do, because it had to, but it was substantially handicapped by its makeshift physical plant. The new courthouse has been in use for three years, a period barely long enough for the full benefits of its design to be reflected in court statistics.

Moreover, the management of the Superior Court was not, until quite recently, fully attuned to its responsibilities. The management systems of the old Court of General Sessions, including a system of judicial assignments which in

- 76 -

the view of the Court Study Committee did not properly deploy the court's judgepower, have only slowly and incrementally been replaced in the Superior Court. Many of these changes are also quite recent, and should lead to further changes and improvements in the near future.

The Committee believes that such recent reforms as the expansion of the individual-calendar system, the appointment of administrative judges for the divisions of the Court, and the move away from monthly reassignment of judges, will be reflected over time in improved caseflow in the Superior Court.

The drafters of the Court Reform Act apparently did not consider allowing D.C. judges the option of taking "senior status," as federal judges may do. The Act contemplates only "active" judges and "retired" judges. We believe that the D.C. Code should be amended to allow judges of the D.C. courts to retire from regular active service but to retain their office as judges, so long as they remain fit to serve.

The determination of a judge's fitness to continue in office is, of necessity, a delicate matter. The Committee suggests in Section V of this Report that this determination be made by the D.C. Judicial Disability and Tenure Commission. Judges whom the Commission found not qualified to continue would be disqualified from further service.

The statute also provide that D.C. judges who have taken "senior status" may continue to contribute to their

- 77 -

retirement and survivorship annuities if they so desire. The Committee has serious concern about the legal and secretarial staff services provided to the retired judges who continue in active judicial service. This issue is discussed in Section VIII of this Report.

Recommendation: The Court Study Committee recommends that there be added, to Title 11 of the D.C. Code, a provision similar to 28 U.S.C. §371(b), allowing a judge to "retire from regular active service" while retaining his or her position as a judge, and to be referred to as a Senior Judge.

While the Superior Court has made more extensive use of magistrates, hearing examiners, and other "para-judges" to handle case-processing tasks than the predecessor Court of General Sessions, the various Court Study Committee reports suggest a number of areas where further delegation of authority is appropriate. The Court should explore the potential of freeing some judges to try cases by shifting some calendar control, routine procedural motions review, and other quasi-judicial tasks to subordinate judicial officers.

One of the underlying principles of the 1970 D.C. Court Reform Act is that every litigant has the right to have his or her day in court before a fully qualified judge. Unification of trial courts recognizes that every case is important to the litigants, and that inferior courts all too often dispense an inferior brand of justice. It must be recognized, however, as the ABA Standards put it, that small cases and preliminary and interlocutory hearings usually involve relatively narrow and specific legal and factual

- 78 -

issues and hence do not require the knowledge and versatility possessed by judges having long professional experience.¹¹

Some United States District Courts, including that for the District of Columbia, have made extensive use of magistrates without sacrificing the quality of justice. As the ABA goes on to say,

This arrangement economizes the time of the regular judges and recognizes the fact that smaller civil and criminal cases ordinarily require different legal skills, experience, and authority, particularly the capacity to function fairly and efficiently in handling large volumes of cases It can serve also as a training ground for judicial advancement.¹²

The judicial appointment of two previously local U.S. Magistrates to the D.C. Superior Court bench demonstrates the accuracy of the last statement. It has been all too frequently demonstrated that many truly able trial judges flounder in the calendar-call branches of the Superior Court. Trial judges should not and cannot be selected on the basis of their ability to move large volumes of small cases without diluting the Court's ability to handle complex cases. "Judicial Officers" can and should be selected on that basis.

The Committee urges the Superior Court to make greater use of para-judicial officers in the early, more procedural, stages of cases and in interlocutory matters.

¹¹ American Bar Association, Standards for Court Organization, Commentary to § 1.11(b), p. 8(1974).

¹² Ibid., Commentary to §1.12(b), p. 25.

- 79 -

Several other factors need to be reviewed with regard to the judicial complement of the Superior Court, and the Court of Appeals as well. While the authorized judicial strength of the Court is 44 judges there have been many periods during the past ten years when the actual judicial complement was as much as three to five judges less. Without factoring in normal vacation, sickness and in-service education allowances for the judges at all, the Committee was made aware of a number of instances where judicial vacancies on the Court went unfilled for periods of nine months to a year. The point in this context is that by all appearances the average number of judges available for service on any given day in the Superior Court is considerably less than the 44 judge complement authorized in the Act.

The final note in the area of judicial resource needs of the D.C. Courts involves court delay and the interdependence of the Court and the legal community in this regard. The Court Study Committee was not able to analyze in any systematic manner the various caseload disposition and related indices for the Superior Court with those of Courts in other jurisdictions.¹³ The Committee is aware of many of the incremental efforts the D.C. Courts have made to facilitate the flow of litigation, and that the capacity of the Court to

¹³ The reader is referred to a useful research study in this regard by the National Center for State Courts. Church, Thomas, Jr. et. al. Justice Delayed: The Pace of Litigation in Urban Trial Courts. (Williamsburg, VA.) 1978.

- 80 -

make lasting improvement may not be possible if the judicial strengths remain at existing levels.¹⁶

The Court Study Committee has concluded, on the basis of its inquiries into virtually every major functional area of the D.C. Courts, that the Courts are being heavily taxed to keep pace with the workload demands. The evidence the Committee has reviewed strongly points to the need for additional judges and related Clerks' Office staff for the Superior Court, and a parallel need to provide mechanisms whereby the actual judicial strength approximates the authorized judicial strength. Accordingly the Committee concludes that the leadership of the D.C. Courts in conjunction with the D.C. Council and the U.S. Congress, and others as appropriate, promptly determine the judgeship and related Court staff needs in the Superior Court. The product of such a study should be reflected in legislative proposals at the earliest feasible time.

Recommendation: The Court Study Committee recommends that the leadership of the D.C. Courts in consultation with the D.C. Council, the U.S. Congress, and others as appropriate, promptly study the number of judges and other related resources needed in the Superior Court. Should such a study indicate that additional judges or other support personnel are needed appropriate legislation should be enacted at the earliest feasible time.

¹⁶ Ibid. pg. 84.

- 81 -

SECTION VIII JUDICIAL COMPENSATION, CONTINUING EDUCATION,
AND RETIREMENTA. Judicial Compensation

The 1970 D.C. Court Reform Act provides that District of Columbia judges' salaries are set at ninety percent of those of federal judges. Currently associate judges receive an annual salary of \$60,390 in the Superior Court, and \$63,810 in the Court of Appeals. The chief judge of each court receives an additional \$500 more than an associate judge.

While the judicial compensation levels have risen in the past year to their current levels, additional increases are in order if the D.C. Courts can expect both to retain existing judges and to attract the highest caliber of judges in the future. At the federal level this issue has been the subject of recent in-depth study by a Presidentially appointed Commission on Executive, Legislative and Judicial Salaries. The Commission's December 1980 Report noted that pay levels in the upper reaches of the government have lagged far behind inflation. Pay Commission Chairman Joseph H. McConnell noted that since 1969 the cost of living has gone up 135 percent, but salaries of judges increased only 35 percent. Under the Pay Commission's recommendation Federal judicial salary levels would increase to \$85,000 for U.S. District judges and \$90,000 for U.S. Circuit Court judges. With the 90 percent parity provision for D.C. Court judges, the equivalent levels would be \$76,500 for the Superior Court, and \$81,000 for the Court of Appeals.

- 82 -

The Court Study Committee favors the basic principle of tying D.C. Courts' judges' salaries to at least 90 percent of Federal judges' compensation levels. This near-parity of compensation between the Federal courts judges and the District's judges is important for a number of reasons, not the least of which concerns attracting highly qualified applicants. Were there to be a more substantial salary gap, it is conceivable that able lawyers, otherwise attracted to judicial service, would decline nomination to the D.C. Courts. The Committee is concerned about the possibility that national political considerations may restrict needed judicial salary increases in the federal and D.C. Courts. Accordingly, the Committee favors amending the Act to provide that salaries of D.C. Court judges shall be fixed at a figure of at least 90% of that of the federal judges.

Recommendation: The Court Study Committee favors raising the D.C. Courts judges' salary levels as generally set forth by the Presidential Pay Commission in December 1980.

B. Judicial Retirement

Generally, the Court Study Committee recognizes that there should be a compulsory retirement age for members of the District of Columbia judiciary. Such a system makes possible the orderly termination of service of jurists who, on average, have reached a point in their lives when their physical and mental powers would limit their ability to continue with a full caseload. A judge who has retired but who nevertheless continues, at the discretion of the chief judge, to perform

- 83 -

the duties of a judge should be paid the same salary pro-rata as his peers in regular active service. (Other facets of senior judges' service on the D.C. Courts bench are addressed in other sections of this Committee Report dealing with the D.C. Judicial Disability and Tenure Commission.)

The Committee has reviewed the retirement program for the Superior Court and the District of Columbia Court of Appeals, and in most regards find it to be satisfactory. The District of Columbia judges' retirement plan establishes minimum eligibility criteria in terms of both years of service and age. A minimum of ten years of judicial service is required for regular service retirement. In addition, a judge must normally be at least 60 years of age to retire. However, full retirement at age 50 is available for judges with twenty or more years of service, while after age 55 judges with less than twenty years of service may retire on a reduced annuity. The retirement system is based on the number of years of service; in effect, a judge receives 3-1/3 percent of his final salary for each year of judicial service. Judges electing to retire after ten years of service before reaching age 60 receive an annuity based on the same formula but reduced by 1 percent for each year of age below 60. A judge must retire at age 70, regardless of length of service. The maximum annuity payable at time of retirement is 80 percent of final salary. As noted above, a retired judge may continue to perform full-time judicial duties at the request of the chief judge of the

- 84 -

respective court. For such service, a retired judge will receive the salary of an active judge; however, this salary is reduced by the amount equal to the retirement annuity for the period. No retirement contributions are required for this additional service, nor do any further retirement benefits accrue to the judge.

There is one facet of the D.C. judges' retirement plan which the Court Study Committee believes needs legislative revision. The existing statute allows any D.C. judge who is appointed to the Federal bench, and who meets the age and length of service provisions of the Act to collect retirement income under the District of Columbia system while serving on the Federal bench. We find no fault with any individuals who have benefited by this provision, but conclude that the legislation should be amended to eliminate this existing provision.

Recommendation: The Court Study Committee recommends that the D.C. Code be amended to provide that Federal judges with prior D.C. Courts service will receive credit for such D.C. service for purposes of retirement but shall not collect retirement under the D.C. system while still active Federal judges.

The Court Study Committee has repeatedly been advised that retired judges in the D.C. Courts who continue actively to serve this Court do not have adequate support resources available. Federal judges who take senior status under 28 U.S. Code usually retain their chambers; their assigned courtrooms, if they are trial judges; and full complements of support staff. The D. C. judge loses almost all these perquisites

- 85 -

of office, including a secretary and law clerk, at retirement, even when he/she voluntarily chooses to continue in active judicial service.

The lack of supportive services and facilities makes continued judicial service not just unattractive but downright difficult. It would be next to impossible for a retired Superior Court judge to carry an individual calendar, no matter how reduced in caseload, without adequate facilities and complement of staff. It is distasteful for any judge with a pride of craftsmanship to attempt to function under such circumstances, in either D. C. Court.

Not to provide the staff and facilities necessary to attract able retired judges back to the bench is penny wise and pound foolish. While the new D. C. Courthouse may not have enough chambers space (indeed, it could not accommodate many new active judges if Congress were to provide them), pleasant quarters are available in the old Judiciary Square complex. By making such quarters and a personal staff available to those retired judges willing and able to bear a substantial workload, the courts would get experienced judicial assistance at relatively low cost.

The Committee calls upon the D.C. Council and U.S. Congress as well as the D.C. Courts leadership to make every effort to insure that adequate facilities and staff, including secretaries and law clerks, are made available to retired judges in continued active service.

Recommendation: The Court Study Committee recommends that every effort be made to provide adequate support staff to retired or senior status judges who continue in active, substantially full-time, judicial service.

C. Judicial and Other Court Employee Continuing Education

It is essential that members of the judiciary and other D.C. Courts staff receive continuing training and education so as to maintain a high level of professional and managerial competence in the third co-equal branch of government. One of the central tenets of the 1970 D.C. Court Reform Act at the trial level was the availability of a pool of judicial talent who could be deployed, and redeployed, among the various divisions of the Court by the chief judge as the needs of the Court demanded. Implicit in this overall assumption was that the judges who are "sent" to one area or another within the Court are competent to discharge their duties and responsibilities. In an environment where for the first five years of the Court Reform Act's implementation, judges were reassigned very frequently -- often even monthly -- the need for adequate judicial education programs is paramount. While many ad hoc and individual efforts have been undertaken, the D.C. Courts lack a comprehensive continuing education program for judges and other court personnel.

All newly appointed judges need a comprehensive orientation to their new role. Training is also needed for the administrative responsibilities of the judicial office which are distinct from the normal professional experience of

- 87 -

lawyers. Further, experienced jurists need to participate in regular periodic in-service courses in both substantive and procedural law in order to keep pace with our dynamic legal system, as well as with new techniques in court administration and other areas.

The Court Study Committee has examined the judicial education and training efforts of the District of Columbia Courts and believes that, while substantial efforts have been demonstrated in the past, these activities need to be strengthened and improved.

At present the Court's new judge orientation program is generally regarded as fairly comprehensive, and of great assistance to those who are new on the bench. However, according to interviews conducted by the Committee, on occasion there seem to be delays in holding the orientation programs due to the fact that judges are appointed to the bench individually. In order to avoid a waiting period of perhaps several months, the Court should consider expanding the videotaping of parts, if not all, of the new judge orientation program. A videotaped program would enable a newly appointed judge, or one nominated but awaiting completion of the confirmation process, to receive a substantial orientation to the work of the Court without having to wait for others to be appointed. The Committee commends the efforts that have been initiated within the Court for new judge orientation, and favors a statutory provision of mandatory pre-service education

- 88 -

before a new judge actually begins serving on the bench. In any event it is essential that in all cases the new judge orientation program be held during the first thirty days of judicial service for judges on the D.C. Courts.

The Court Study Committee also notes that a large percentage of the D.C. Courts' judges have participated in one or more of a variety of judicial education programs. A number of judges have attended residential programs at the National College of the Judiciary in Nevada. The Committee was gratified to learn that the chief judges of the Superior Court and the Court of Appeals have always been supportive of using Court funds whenever available for judicial training and education.

A number of states have adopted mandatory continuing legal education for judges. States ranging from Wisconsin and Minnesota to Iowa and South Carolina currently have such requirements. The Court Study Committee believes that every effort should be made to insure the availability of a regular continuing judicial education program for the Superior Court and the D.C. Court of Appeals. Possibilities under such a program are varied and could include providing for in-house or outside experts to develop programs on various relevant topics. Such programs should be ongoing and, where relevant, divided at the trial level by Division -- Criminal, Civil, Family, etc. The Court Study Committee's separate report on the Juvenile and Child Neglect areas identifies a number of areas where further judicial education initiatives are needed. The absence of such programs raises serious questions about the quality and

- 89 -

adequacy of decision-making by judges hearing such cases. While the Committee believes that an across-the-board program of in-service continuing education is warranted for the D.C. Courts, it was unable to conduct a thorough needs assessment in this area. Such a needs assessment or other further analysis would be required before statutorily required annual judicial education requirements could reasonably be imposed in this jurisdiction.

Recommendation: The Court Study Committee recommends that a needs assessment of in-service judicial education in the D.C. Courts be conducted. The analysis should identify areas requiring priority attention as well as development of a phased plan for assuring the availability of adequate in-service judicial and non-judicial education in the District of Columbia.

In-service judicial education is particularly necessary when Superior Court judges rotate among the divisions of the Court. To date the in-service education at the divisional level has been almost completely dependent upon the initiative of the divisional administrative judge, or on the work of a few particularly concerned judges. The Court Study Committee believes that prior to rotation into a new division, trial judges without recent prior experience in a division should be encouraged to spend a full week both on and off the bench with a judge who is currently sitting in the division or who has had extensive experience in the division. Several of the judges interviewed by the Committee have initiated informal meetings on their own, with some success; however, none of

- 90 -

those interviewed indicated any effort in spending a full work week with the experienced jurist prior to being rotated into a new division. Working with the experienced jurist would result in a judge's being made aware of recent court decisions, procedures unique to a particular division, and the present range and effectiveness of disposition alternatives.

Further, the District of Columbia Court system must insure adequate funding for its judges to participate in national advanced study programs. The Committee strongly encourages the opportunity for contact with peers to discuss mutual ways of solving various judicial and administrative problems, as well as allowing time for reflection and redirection of thought. The Court Study Committee seriously considered the matter of periodic sabbaticals for D.C. Court judges. While in principle we believe such a provision would be highly beneficial to this community, concern for the workload and fiscal impacts precluded this otherwise desirable recommendation being made. While federal funding is limited and probably will be reduced in the future, the Committee strongly encourages the D.C. Council and U.S. Congress to provide the D.C. Courts adequate funds in its operating budget each year for both judicial education and training, and training of other Court personnel, so that those judges and others court personnel who would benefit from attending such programs not be prohibited from doing so for financial reasons. Further, the D.C. Courts' leadership should encourage all interested judges to participate in these advanced study programs.

- 91 -

Recommendation: The Court Study Committee recommends that the Board of Judges of the Superior Court adopt a policy requiring mandatory continuing judicial education for judges each time they are assigned to a new Division within the Court, or to an assignment where they have not served in the previous three years.

At present, a benchbook is being developed for the District of Columbia Court system. The Committee sees a serious need for such a handbook, and encourages the District of Columbia Court System to complete the benchbook expeditiously. (The continued availability of a comprehensive benchbook for each substantive judicial assignment area would somewhat lessen the present need for judicial education programs in the D.C. Courts.)

The Committee also sees a great demand and value in developing a comprehensive education and training program for non-judicial employees of the court system. To date the most effort in this regard appears to have been made by the leadership of the Social Service Division. Various options which should be considered include a comprehensive orientation program for new employees, the creation of an in-service education and training program conducted by appropriate supervisory personnel, consideration of sending non-judicial employees to existing training programs conducted by the Federal Judicial Center, other organizations, and other approaches. In order to facilitate these programs, the chief judge of each Court should direct the executive officer to take the appropriate steps to insure that each of the above recommendations

- 92 -

regarding the education and training of non-judicial employees be taken or considered.

Test the impression be created that no training programs have been undertaken by the court in the past, it should be noted that a number of separate initiatives have been taken. These range from quarterly training days for all court staff, to mid-manager training programs.

In order to advance the development of each of the above several proposals, the District of Columbia court System should have a committee of judges and subordinate Court staff, appointed by the Joint Committee on Judicial Administration, assigned to coordinate its judicial and non-judicial education program.¹⁵ If the formulation of such a committee is not feasible, judges who have demonstrated interest in this important subject should be appointed to coordinate a comprehensive judicial training program for the D.C. Courts. The assigned judges would be responsible for coordinating all aspects of training and educational needs of the court system with staff assistance from the Court Executive's Office. Responsibilities would include developing and executing orientation programs, in-house continuing judicial education, and assisting

¹⁵ The Court Study Committee recommended the replacement of the Joint Committee as presently constituted with a nine-member Judicial Council. The Judicial Council in this context would coordinate the development of the court education program.

with planning D.C. Courts' employees participation in any national advanced study programs..

Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration appoint a committee of judges, subordinate Court personnel and others to develop and facilitate the availability of a comprehensive continuing education program for Court employees -- judicial and non-judicial.

SECTION IX THE BUDGET OF THE D.C. COURT SYSTEM

Background

When the U.S. Congress set up the new District of Columbia Court System by the 1970 D.C. Court Reform Act, it sought to make the local courts independent both of the federal courts and of the executive branches of the Federal and the District governments. In language carefully made parallel to the similar provisions for the federal courts, the 1970 Act gave the D.C. Court System fiscal independence, by making its highest administrative body the master of its budget.¹⁶ D.C. Code Section 11-1743(a), as adopted and codified by the 1970 Act, requires the Joint Committee on Judicial Administration in the District of Columbia to:

¹⁶ 28 U. S. C. 605 provides:

The Director (of the Administrative Office of the U. S. Courts) . . . shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the Federal courts . . .

All such estimates for the Federal Courts shall be included in the budget without revision, but subject to the recommendations of the Bureau of the Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court.

The pertinent portion of 31 U.S.C. § 11(a)(5) provides:

. . . estimated expenditures and proposed appropriations for . . . the Supreme Court of the United States shall be transmitted to the President . . . and shall be included by him in the Budget without revision. . . .

prepare and submit to the Commissioner of the District of Columbia annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system.¹⁷

Section 11-1743(b) requires that all the Joint Committee on Judicial Administration's estimates:

shall be forwarded to the Bureau of the Budget by the District of Columbia without revision, but subject to the recommendations of the District of Columbia. Similarly, all estimates shall be included in the budget without revision by the President but subject to his recommendations.

Section 11-1743 was reported out by Committees of both Houses of Congress, passed by both Houses, and enacted into law as part of the 1970 D.C. Court Reform Act exactly as it appeared in the initial Justice Department draft of the Act.¹⁸

As Judge John W. Kern, III of the D.C. Court of Appeals wrote at the time of passage of the 1970 D.C. Court Reform Act:

¹⁷ Created by D.C. Code § 11-1701(a), this Committee consists of the Chief Judge of the Court of Appeals (chairman); an associate judge of that court elected annually by its judges; the Chief Judge of the Superior Court; and two judges of that court elected annually by its judges.

¹⁸ S. 2601, 91st Cong., 2d Sess., introduced July 11, 1969, p. 99. See S. Rep. No. 405, 91st Cong., 1st Sess.; H.R. Rep. No. 907, No. 91-1303, 91st Cong., 2d Sess.

- 96 -

The remarks of the late Chief Justice Fred M. Vinson upon the creation of the Administrative Office for the United States Courts seem appropriate. "[Now] the courts become separate and independent of the Executive in administrative matters, just as they have always been separate and independent in . . . their decisions."¹⁹

This basic statutory pattern was revised, but not fundamentally altered, by the D.C. Self-Governmental Reorganization Act of 1973, which became law in 1974. The "Home Rule" Act, P.L. 93-198, did not directly repeal or amend the codified sections of the 1970 D.C. Court Reform Act. It created, however, a new nomenclature and a new budget structure for the D.C. Government. The appointed Commissioner became the elected Mayor, and the Act requires him to submit an annual budget for the District to the new, elected D.C. Council, which adopts the annual budget by legislative act, for submission "by the Mayor to the President for transmission by him to the Congress."²⁰

The Home Rule Act integrates this new procedure into the provisions of the 1970 D.C. Court Reform Act guaranteeing fiscal independence for the D.C. Courts by Sections 445 and 603(c). Section 445 starts with a sentence substantially identical to D.C. Code § 11-1743(a):

¹⁹ Kern, "The District of Columbia Court Reorganization Act of 1970: A Dose of the Conventional Wisdom and a Dash of Innovation," 20 A.U.L. Rev. 237, 249 (1970); citing and quoting Vinson, "The Business of Judicial Administration," 35 A.B.A.J. 893, 896 (1949).

²⁰ P.L. 93-198, Section 446.

The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system.

It then requires the Mayor to "forward" the Courts' estimates to the D.C. Council, "without revision but subject to his recommendations." The Council is allowed to "comment or make recommendations" on the Courts' estimates, "but shall have no authority under this Act to revise such estimates." The remainder of the section requires the Courts to include "a multiyear plan and a multiyear capital improvements plan" in all Court budgets, together with "a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of" the D.C. Auditor and the U.S. Comptroller General.

Section 603(c) of the Home Rule Act generally requires the Council of the District of Columbia to submit a balanced budget for every fiscal year. To accommodate the D.C. Court System's power to present an independent budget, however, the subsection closes with this proviso:

In determining whether any such budget would result in expenditures . . . in excess of . . . resources, amounts included in the budget estimates of the District of Columbia Courts in excess of the recommendations of the Council shall not be applicable.

Thus the basic statutorily prescribed pattern established for the budget approval process of the D. C. Courts in 1970 remains unchanged. The parallel to the Federal Courts' budget process

- 98 -

in terms of maintaining the separation of powers of the D.C. Courts from the D.C. and Federal Executive Branches, and of assuring the necessary fiscal independence of the Court was preserved.

The Joint Committee on Judicial Administration of the D.C. Courts is charged by statute with the duty of preparing "the integrated budget of the District of Columbia Court System" pursuant to D.C. Code 11-1701(b), and in turn with determining how much funding is required for the maintenance and operation of the D.C. Courts. The Home Rule Act of 1973 and the 1970 D.C. Court Reform Act both require that the D.C. Court System budget be submitted through the Mayor, the Council, and the President to the Congress; and the only body with authority to reduce the Joint Committee on Judicial Administration's appropriation request is the U.S. Congress, although the three intermediary bodies may comment or make recommendations.

Unfortunately, this basic statutory concept, that the District of Columbia Court System should be independent of the Executive and Legislative branches of the District of Columbia Government, has been largely ignored by the Mayor and the D.C. Council in recent years, and even by the Congressional staffs and committees. In most of the last ten years annual overall District of Columbia Government Budgets, for example, the Courts are not listed as an independent branch of that government, but simply as another "agency," lumped with the

Police Department, the Fire Department, and the Department of Human Services.

In the view of the Court Study Committee, the inappropriate handling of, and lack of deference given to the independence of, the D.C. Courts' budget, by the Mayor and the City Budget Office, directly reflect a lack of understanding of the fundamental activity of the Courts as a forum to independently adjudicate disputes.

A. The Budget Process

Approximately fifteen months prior to the commencement of a fiscal year ("FY"), a budget "call" is transmitted by the Mayor to the "heads of all agencies, boards and commissions" to estimate budgetary needs to maintain an acceptable level of operation. The Mayor sets a "planning mark" for each "agency," including the Courts, without, in the case of the Courts, prior consultation with officials of the courts. The fiscal 1981 planning mark, for example, was determined pursuant to the following guidelines in the Mayor's Memorandum dated July 3, 1979:

Your FY 1981 planning mark consists of the FY 1980 original budget request, allocation of prior year pay amounts, and program adjustments making increases or reductions to base amounts. . . .

This mark assumes that the current number and mix of programs and the personnel level will be reduced in FY 1981. Accordingly, it does not provide additional funding for within grades, inflation, expanded workload, etc. . . . (See MM 79-103, dated July 3, 1979.)

Because the planning marks set for the Courts have been consistently lower than the amounts needed to guarantee the efficient administration of the court system, the Courts have prepared an independent submission which, under the D.C. Code, 11-1743, must be transmitted to Congress without change subject only to recommendations from the District Government. Submissions are due to the Mayor's Budget office in August of the prior year.

Shortly after the submission of the budgets, the Mayor's Budget office holds hearings, and from time to time new items will be added into the planning mark. In the Summer of 1980, all agencies, as well as the D.C. Court System represented by the two Chief Judges, met with the Mayor to review the Budget office recommendations on the Courts' budget. This exchange resulted in enhancements to the Courts' budget base of \$1,553,300. (Note: \$2,473,800 in increases over the "approved ceiling" had been requested by the Courts.) The difference amounted to \$920,500. Thus, in the Courts' FY 1981 budget submission to the D.C. Council, two requests were presented for consideration: (1) the Mayor's recommended Court budget of \$32,310,000, and (2) the Courts' budget of \$33,230,500. Procedurally, the Council considers the recommendations and sets its own mark. If this mark is different from the Mayor's, the veto process may be initiated. As the figures in the chart indicate, the District Government routinely supports a figure for the Courts substantially lower than requested.

- 101 -

Moreover, as noted above when the fiscal budget document is prepared for transmittal to Congress, the Courts' budget submission is included as a component of a much larger "Public Safety" request, being included with such Executive Branch departments as Police and Fire.

	<u>Courts' Request</u>	<u>Mayor's Recommendation</u>	<u>Congressional Authorization</u>
FY 80	31,563,800	30,857,200	29,305,900
FY 79	27,940,200	27,739,000	26,963,400
FY 78	28,619,000	27,501,700	27,341,600
FY 77	29,172,300	26,893,500	27,172,100
FY 76	27,414,000	25,888,400	25,782,900
FY 75	24,673,100	23,252,500	23,089,100
FY 74	21,549,700	18,384,400	20,030,600
FY 73	20,239,100	20,194,700	19,639,100
FY 72	18,403,200	18,318,000	17,979,800

For most of the past several years Congress, in its deliberations on the District of Columbia budget, has accepted a figure closer to the Mayor's version of the amount of appropriations necessary to maintain and operate the District of Columbia Courts rather than the Courts' own estimates, which are by law submitted independently by the Joint Committee on Judicial Administration. This action of the Congress may have been largely due to the fact that the Mayor's presentation of the District budget (including his version of the budget of the Courts) is the only "balanced" budget submitted. It should be noted that in only one year's appropriation since FY 1976 did the Congress approve a greater figure for the Courts than was recommended by the Mayor. That increase occurred in FY 1977 and may be attributed to the needs created by the impending move into the new court facility.

- 102 -

Of course the Court Study Committee recognizes the enormous financial difficulties confronting the District of Columbia Government at the present time and the importance to that government of making strenuous efforts to hold down expenditures in every area. The Committee is also cognizant and fully supportive of the continued movement to full home rule for the District of Columbia. The Committee is not unmindful of the natural desire on the part of the District of Columbia Council to act as the ultimate or final authority in fiscal matters, analogous to the authority exercised by the legislature of a state, without regard to Congressional review. But, in the opinion of the Court Study Committee, this does not excuse the actions of the Mayor (a) in announcing to the Courts in advance what their fiscal year budget planning mark will be, and (b) the Mayor's treatment of the Courts as though they are a subordinate administrative agency rather than a separate co-equal branch of the tri-partite system of the D.C. government. This denigrating of the D.C. Court System is not cured by lip-service adherence to the statutory provision that the Courts' budget shall be transmitted to the Congress intact. In practice the budget, as submitted by the Courts, often has been forwarded to the Congress as an appendix to the D.C. Budget, as though it were an afterthought.

The historic practice followed by the District Government Budget Office of failing to treat the D.C. Courts as a separate entity reflects a troublesome lack of awareness by

the Executive Branch as to the underlying reasons why the Courts must be considered separately. The basic function the Courts perform -- adjudicating disputes -- is not effectively subject to budgetary planning and controls in the same way that many public services are. The Court is assigned certain roles and duties by statute which it cannot "administratively" decide to no longer perform.

The Court Study Committee again returns to the Federal Courts budget process for parallels. The Federal Court budget in no meaningful way is analyzed or "critiqued" by the Executive Office of the President, in the Office of Management and Budget. The Federal Court budget is almost literally passed on by the President in the Annual Federal Budget submission to the appropriate Congressional Committee. At the District Government Executive Branch Budget Office, however, the D.C. Courts' budget, for most years since the 1970 D.C. Court Reform Act, has undergone detailed analysis and scrutiny.

In the opinion of the Court Study Committee the Mayor should keep hands off the Courts, fiscally speaking. Their Budget should be transmitted intact as required by law, by the Mayor, to the D.C. Council and to the Congress. It is of course appropriate for the Mayor, where necessary, to comment on the Courts budget submission. The Committee fails to understand how the Mayor can justify functionally, or in terms of staff utilization, assigning Budget Office staff to

examine and "revise" the Courts' budget requests. (In comparison with the budgetary appropriation to other major areas of the D.C. Budget, the Judicial Branch is very small.)

It is also appropriate for the D.C. Council to hold hearings on the Courts' budget and to make such recommendations to the Congress for changes therein as the Council deems appropriate.

The Court Study Committee, in researching this brief section on the Court budget, interviewed both District Government and Congressional staff officials. A repeated theme of the Congressional interviews was the informal preference for the Mayor and Council to "flag" specific budgetary items in the Courts' budget and elsewhere that the Congressional staffs might examine more closely. Such an operating procedure may be appropriate with regard to the Mayor suggesting items or areas within Executive Branch Departments where budgetary changes may be possible. Such an informal procedure by Congressional budget staffs when it comes to the D.C. Courts as a separate and distinct branch of the D.C. Government is wholly inappropriate, and reflects a failure by the Congressional staffs to grasp the Congressional intent of the 1970 D.C. Court Reform Act and the 1974 Home Rule Act. Where the Congress has budgetary concerns or questions with the D.C. Courts, they should be directed to the Joint Committee on Judicial Administration of the D.C. Courts, and not to the Mayor or District Budget Office, just as it would be inappropriate to query the

Court leadership about the adequacy of the Public Library System budget.

The Committee concludes that in keeping with the dignity and the independence of the Court as a separate branch of government, the D.C. Council and the U.S. Congress should limit their determinations on the D.C. Courts' budget to broad programmatic policy and fiscal areas, and leave to the D.C. Courts the decision of how specifically to effect any needed revisions in the Annual Budget of the D.C. Courts.

If the procedures briefly outlined here were followed, the D.C. Courts would not be independent of fiscal oversight and restraint, nor indeed should they be. The Courts would, however, begin their fiscal process as they should, namely, as a separate, independent branch of our tri-partite system of government. It is believed that the Court budget would then procedurally receive more "deferential" consideration by the Executive Branch and the Legislative Branch of the D.C. Government, and by the Congress. This is as it should be.

Recommendation: The Court Study Committee finds that the degree of fiscal interference and budgetary oversight by the D.C. Budget Office and Mayor of the D.C. Courts' budget is wholly inappropriate, and not in keeping with the clear statutory intent of the 1970 D.C. Court Reform Act and the D.C. Home Rule Act that the D.C. Courts be an independent and separate branch of the D.C. Government. The Committee recommends that the D.C. Courts adhere to a procedure of determining and requesting appropriation needs independent of any advance fiscal ceilings "imposed" by the Executive Branch.

Recommendation: The Committee further recommends that the Mayor of the District of Columbia provide the D.C. Court System the degree of fiscal autonomy as provided for in the 1974 Home Rule Act.

Recommendation: The Court Study Committee recommends that the Council of the District of Columbia and the Congress annually limit any budgetary recommendations regarding the D.C. Courts' budget to broad program areas, leaving to the Court leadership the decision as to where and how to effect the changes.

Recommendation: The Court Study Committee recommends that the Congress give greater deference to the D.C. Court System's Annual Budgetary Proposal, and that any inquiries about aspects of the Courts' budget proposal be directed to the D.C. Courts as a separate and independent Branch of the District Government, and not to the Mayor or the District Budget Office.

B. Role of the Bar in the Budget Process

The Bar has an important stake in an efficient and effectively administered court system. Bar associations in the District of Columbia in the past have focused most of their court-related efforts on specific substantive and procedural issues, rather than on more generalized matters such as the budget. Little concerted notice has been taken by any bar group in the District of Columbia over a period of time as to the budgetary needs and priorities of the D.C. Courts.

One explanation cited for the lack of bar association attention to the budgetary needs of the Court is that the budget documents themselves inhibit ready understanding of the various priorities and needs. Coupled with this in the past has been a lack of meaningful communication between the D.C.

Courts and the bar in the budget area. This has resulted in bar groups not being sufficiently conversant with overall court problems and needs, and thus unable to effectively support the Courts' budgetary needs before the legislative bodies. (Note should be made that the D.C. Bar Board of Governors is barred from taking positions on legislative proposals - including proposed court budgetary requests - without advance authorization of the bar membership through referenda action or otherwise. Individual divisions of the D.C. Bar may, however, express their views before the D.C. Council and U.S. Congress regarding court budget needs.)

Efforts such as the work of the D.C. Bar's Court System Study Committee facilitate bar members' knowledge of court operations, problems and the often difficult choices facing the D.C. Courts. The Court Executive of the D.C. Courts is in a particularly central position to develop approaches for the broader understanding of the budgetary priorities and needs of the Judicial Branch of the D.C. Government.

Recommendation: The Court Study Committee recommends that the Board of Governors of the D.C. Bar discuss with the voluntary bar associations' leadership the issue of organized bar support of the D.C. Court System budgetary needs and priorities where warranted, and after appropriate study and consultation with the Courts' leadership.

SECTION X INFORMATION SYSTEMS

A. Information Systems for Court Management Use

In courts, as in virtually any other type of organization, a sine qua non of effective management is accurate and timely data on the actual operations of the business or organization. Automated systems are an ideal tool for furnishing these kinds of data for large scale organizations such as the D.C. Court System. If the automated systems are well designed, computerized data used in servicing case level administrative activities can be quickly and inexpensively reaggregated into countless different perspectives on the management of courts.

For example, decisions on the allocations of judges among the various divisions of the Superior Court (Criminal, Civil, Family, Probate) should be based in part on aggregate data on the backlogs in the various Divisions as well as data on the most frequently cited judicially related reasons for delay. Adding judges to a division where most continuances are attributed to unavailability of counsel would not facilitate case disposition by the Court.

Additionally, one of the most important policy decisions of the judiciary concerns the scheduling of cases within the divisions. Available resources should be used in a way that is fair to the parties involved and to society as a whole. Habitual oversetting of calendars would appear routinely to injure the interests of parties in cases that are not reached. Failure to overset calendars at all would appear

to injure general societal interests by wasting limited judge time and physical facilities. To apportion judge time within divisions in an intelligent fashion, however, requires empirical evidence on the operations of the various calendars within those divisions such as jury, motions, settlement conferences and so forth. For example, the Court would need to know average times between proceedings, mathematical ratios between numbers of cases set and settlement rates, and so forth.

A final example of the need for the D.C. Courts' automated systems to furnish aggregate data relates to three highly sensitive areas of judicial decision-making: bail, continuances and sentencing. Without aggregate data, judges have no opportunity to evaluate their own patterns of decisions and to compare these patterns with those of their fellow judges. Thus, there is no easy method for assisting the judges in achieving evenhandedness within their individual caseloads or in the overall caseloads.

The D.C. Superior Court's automated systems have not been fully supporting management and policy formulation by furnishing adequate aggregate data. To realize this important benefit will require changes in technical standards (recording of data in aggregable form and the availability of tools for making ad hoc statistical inquiries) and organization changes (the creation of a quantitative analysis staff and the creation of a user training/marketing staff). These changes are the subject of separate recommendations in this final section of the Court Organization Report of the Court Study Committee.

The Committee was pleased to learn that a number of important reforms have been instituted in the automated systems area which should, when operational, provide improved statistical and information management capability. For instance in 1981 the Superior Court installed an on-line query capability, a data base management system, and the EASYTRIEVE Report Writer, all of which address the court's information management needs.

Recommendation: The Court Study Committee recommends that the D.C. Superior Court's automated information systems be deployed so as regularly to provide much greater aggregate data for the Court's use in policy formulation and management.

B. Establishment of Adequate Technical Standards

By and large most existing computer programs used in the D.C. Superior Court are written in a machine-oriented language called "assembly language". Although this language is in most instances more efficient than higher level programming languages, such as COBOL (Common Business Oriented Language) or FORTRAN (Formula Translation), it is also more difficult to maintain and to transfer from one machine type to another. The Study Committee understands that the court has begun to convert its old systems to COBOL and that all new computer programs being developed are written in COBOL.

COBOL language is almost universally used for business data processing applications. It is easier to find programmers who know this language and who, therefore, can maintain systems written in it. COBOL is the most English-like

of the programming languages, thus, facilitating good documentation. Documentation is essential in a production environment. Use of this language would also safeguard the Superior Court's investment in programming, because, as stated above, COBOL-based systems can be transferred from one model of a machine to another as the Court changes its computing hardware over time.

It is impossible to anticipate all of the kinds of computer-generated reports users will wish to have in a Court environment. It is not feasible, however, to write special computer programs each time a user requests a type of report that is not a routine product of the system. Writing special programs means unacceptable delays and costs. For this reason, the Superior Court has purchased and installed the EASYTRIEVE Report Writer package to generate AD HOC reports from both existing data files and the soon to be operational Data Base Management System, IDMS.

Recommendation: The Court Study Committee recommends that the D.C. Court's information systems be equipped with generalized inquiry and report writer software.

The lack of complete and timely documentation is a common problem of automated information systems. This is likewise a problem in the D.C. Superior Court. The absence of adequate documentation makes it more difficult to keep computerized information systems in working order, to make necessary changes to them, and to audit their operations. The Court

Study Committee understands that the Superior Court has instituted program and system documentations standards and procedures for all software systems being developed.

Recommendation: The Court Study Committee recommends that the D.C. Courts' information systems be thoroughly documented, and that procedures be adopted to assure that documentation is kept up to date.

Without a file purging capability, the Court will constantly need to add to its computer hardware, as it attempts in its routine daily production to process all of the cases it has ever automated. The proper approach is to have a purging program to retire closed cases to a history file where they can be used at a later date for statistics. The Court Study Committee observed in the course of its research to prepare its various reports and studies a number of instances in the Superior Court where inadequate methods to purge out of date files existed. For example, the Court has developed a highly efficient automated system to monitor periodic child support and spousal support payments pursuant to judicial orders in the Family Division. However, the Committee also observed that active computerized records existed for cases entering the Court as much as 15 years ago or longer. One Court staff member noted that "children" in question would be in their mid-twenties, yet the child support files remain active in the Court computer system.

The Court Study Committee was informed that in almost all instances where historical data is necessary, purge or

archival processes have been implemented were data records are periodically purged based on established procedures or written to historical files for future recall.

Recommendation: The Court Study committee recommends that the D.C. Courts' automated information systems be designed and structured to permit periodic purging of closed cases to a history file.

C. Court Management/Computer Management Integration

The ability to collect data for management and policy uses is contingent upon the willing cooperation of the Clerk's Office staff. That cooperation, in turn, hinges upon the usefulness of the automated systems to the judicial and clerk's offices in the performance of their daily tasks. For this reason, the D.C. Courts' automated systems at a minimum should perform the following functions:

(a) Automated production of forms and documents required in the processing of cases (these would include at the trial level subpoenas, notices to the jails, gummed labels for case jackets, dockets, calendars and so forth).

(b) Up to date on-line cross indexes in each major operational area, including pretrial release and Social Services Division, to enable support staff to answer case status inquiries quickly.

- 114 -

(c) Methods of capturing and entering data that are incidental to the normal processing of the case.

The addition of a number of computer software and ADP tools by the D.C. Court System as noted earlier in this section should enable the Court to keep abreast of managerial needs.

Recommendation: The Court Study Committee recommends that the D.C. Court Systems' automated systems be integrated into the administrative support functions of the Courts and not be a separate unrelated activity.

For most of the period since the Court Reform Act was enacted, the D.C. Courts' computer center staff have lacked a forum for sorting out competing demands on their time and for mobilizing support for additional resources and changes in practices. The Court Study Committee was pleased to learn that a Users Group or board of directors for the computer center was appointed in early 1979. This users group, composed of clerks and others who are the major users of the center, sets priorities and policies for the computer center. The Court should add a ranking associate judge to the Users Group to assure that the judiciary's information system and management needs are known, and addressed. The Users Group should be charged by the Joint Committee on Judicial Administration or the Court Executive with establishing policies and priorities relating to the development and operation of automated information systems. Additionally, the Court Study Committee would

urge the Users Group to commission an external management audit of the D.C. Courts' computer center.

The D.C. Courts' computer center needs a separate staff of analysts and education specialists whose only tasks are to make certain that the users understand how to take advantage of the automated systems, to define for the computer systems technical staff modifications and enhancements that will benefit the users, and to assure that redundant manual recordkeeping practices are phased out in a timely fashion.

The D.C. Courts also need a separate staff of analysts trained in quantitative methods whose primary tasks are to summarize aggregate automated data for use by court managers, and to define for the computer systems technical staff, and others, changes to existing systems that will enhance their usefulness in management analysis and policy formulation. The Court Study Committee notes in passing the presence within the D. C. Superior Court of a separate Planning and Analysis Division, and would urge the Court leadership to more effectively deploy this group for the general purposes noted above.

The D.C. Courts' computer center should have a separate staff of management analysts whose only tasks are to audit the timeliness, accuracy and completeness of data in the automated systems, and to identify, for the computer systems technical staff and the user training staff, modifications and enhancements that will contribute to maintenance of data quality.

D. Public Access to Court Information

The preceding discussion identifies many important strides, both technologically and otherwise, which the D.C. Superior Court has taken in the past several years to facilitate the availability of better information for internal management purposes about the business of the Court. The improved machine sophistication, better inquiry capability and other reforms are materially improving Court managers' accessibility to more detailed, and potentially more significant management and case related information than was heretofore possible. It is in turn expected that this additional capability will contribute to better decision - making about many of the issues facing the Court.

To date the accessibility by non-Court groups and agencies to court generated statistical and related information has been quite limited. One explanation for this situation may be that the capability of the Court to generate information sought by non-Court bodies was heretofore very limited.

In the past parties seeking case-related statistical information were referred to the most recent annual report of the D.C. Courts. For many inquiries those data were either insufficient to meet the present need or were sufficiently out of date as to lack utility.

As the D.C. Court System improves its capability to generate statistical and other information about the operations

- 117 -

of the Superior Court and the D.C. Court of Appeals it is incumbent on these public institutions to make more frequently available information about their operation. Inquiries from public and private groups for information available within the Courts -- noting any confidentially needs -- should, wherever possible, be granted.

The Court Study Committee favors the D.C. Courts periodically releasing caseload and Court management statistics for use by interested groups and individuals. The types of data furnished in the annual reports of the Courts needs expansion to include such areas as length of time various cases take on average within the court system. The frequency of release of this augmented data should be at least quarterly. The Court should look to the PROMIS methodology for useful models of the type data which needs promulgation on an ongoing basis by the D.C. Courts.

The area of greatest concern to the Court Study Committee in the context of public access to court information is that of attitude. In the past several years noticeable progress has been made by the D.C. Courts leadership in making court information available more easily to non-court groups. However, despite this progress meaningful access to the most routine statistical or case-related information about the Court remains so tightly controlled by the Court leadership as to effectively "chill" information availability to non-court entities. The D.C. Courts are public institutions,

- 118 -

tax-supported, and the public has a responsibility to be informed about how the public business of the Courts is conducted. Court statistics should be routinely available to non-court groups -- public and private.

Recommendation: The Court Study Committee recommends that the D.C. Courts leadership adopt a public information policy which facilitates public understanding of court operations in all appropriate areas through more ready and frequent availability of statistical and other information.

Appendix A

Persons Interviewed

1. Frederick Abramson, Esq., Chairman
D.C. Judicial Nomination Commission
personal interview March 5, 1981
2. Ernest Bailey, Acting Court Executive
D.C. Court System
personal interviews May 19, 1978, August 3, 1978
3. Stacie Balderston, Budget Analyst
Office of Budget & Management Systems
D.C. Government
group interview October 23, 1978
personal interview March 5, 1979
4. Honorable James Belson
Associate Judge
D.C. Superior Court
personal interview May 30, 1980
5. Rita Bank, Esq.
Columbus Law School Clinic
Catholic University
personal interview October 30, 1979
6. Henry Berliner, Esq., Member
D.C. Commission on Judicial Disability and Tenure
telephone interview April 28, 1980
7. Al Berling, Fiscal Officer
D.C. Courts
personal interview November 9, 1978
8. John Bischoff, Esq. Clerk
Family Division
D.C. Superior Court
personal interview November 29, 1979
9. Dennis Catlin, Director
Michigan Judicial Institute
telephone interviews June 4, 1979, January 16, 1980
10. Honorable David Clarke, Chairman
Judiciary Committee
Council of the District of Columbia
personal interview November 30, 1978
11. Comer Coppie, Director
Office of Budget and Management Systems
D.C. Government
group interview October 23, 1978

12. Sara-Ann Determan, Esq.
Practicing Attorney
telephone interview May 5, 1980
13. Peter D'Jinis, Esq.
Attorney Advisor
Superior Court Rules Committee
personal interview May 30, 1980
14. Charles Duncan, Esq., Member
D.C. Judicial Nomination Commission
personal interview March 6, 1981
15. Gene Flango, Research Associate
National Center for State Courts
Williamsburg, VA
telephone interview March 16, 1979
personal interview April 26, 1979
16. Ernest Friesen, Esq., Director
Whittier Court Delay Study
personal interviews May 30, 1979, October 17, 1979
17. Ed Garibedian, Chief
Budget Section
Administrative Office of the U.S. Courts
personal interview January 5, 1979
18. James Graham, Counsel
Governmental Affairs Committee
U.S. Senate
personal interview July 21, 1980
19. Honorable Gerhard A. Gesell
Judge
U.S. District Court for the District of Columbia
personal interview May 3, 1980
20. Honorable Joyce Green
Judge
U.S. District Court for the District of Columbia
personal interview May 25, 1979
21. Honorable Harold H. Greene
Judge
U.S. District Court for the District of Columbia and
member D.C. Judicial Nomination Commission
personal interview October 9, 1980
22. Michael Hall, Esq., Staff Member
District of Columbia Appropriations Subcommittee
U.S. Senate
telephone interview August 2, 1978

23. Cathaee Hudgins, Staff
D.C. Commission on Judicial Disabilities and Tenure
telephone interview May 23, 1979
24. Doug Huron, Esq.
Former Counsel to the President
personal interview July 31, 1980
25. Claudia Ingram, Staff Member
Government Affairs Committee
U.S. Senate
telephone interview June 30, 1980
26. John Karr, Esq.
Practicing Attorney
personal interview April 30, 1980
27. Honorable John W. Kern, III
Associate Judge
D.C. Court of Appeals
personal interviews June 27, 1978, January 28, 1980
28. Gladys Mack, Deputy Director
Office of Budget and Management Systems
D.C. Government
group interview October 23, 1978
29. Dale McIver, Majority Counsel
District of Columbia Committee
U.S. House of Representatives
personal interview September 7, 1979
telephone interview August 1, 1978
30. Linda Meier, Esq.
Former Rules Advisor, D.C. Superior Court
telephone interview November 24, 1980
31. Gregory Mize, Esq., Counsel
Judiciary Committee
Council of the District of Columbia
personal interview January 30, 1980
32. Honorable H. Carl Moultrie, I.
Chief Judge
Superior Court of the District of Columbia
personal interviews August 2, 1978, February 1, 1980,
February 15, 1980
33. Honorable Tim Murphy
Associate Judge
D.C. Superior Court
personal interview October 20, 1978

34. Honorable Frank Q. Nebeker
Associate Judge
D.C. Court of Appeals
personal interview October 16, 1978
35. Honorable Theodore R. Newman, Jr.
Chief Judge
D.C. Court of Appeals
personal interviews July 26, 1978, December 28, 1978,
July 16, 1980
36. M. Brent Oldham, Chairman
D.C. Board of Appeals and Review
D.C. Government
personal interview August 3, 1978
37. Larry P. Polansky, Esq.
Court Executive
D.C. Court System
personal interviews March 8, 1979, October 26, 1979,
October 31, 1979
38. Herbert Reid, Esq.
Counsel to the Mayor
District of Columbia Government
personal interview September 5, 1979
39. Benjamin H. Renshaw, Director
Statistic Division
National Criminal Justice Information and Statistics
Service LEAA
personal interview September 13, 1978
40. Judith Rogers, Esq.
Deputy City Administrator for Inter-Government Affairs
D.C. Government
(currently Corporation Counsel)
personal interview April 9, 1979
41. Professor David Saari
American University
personal interview June 14, 1978
42. John Shulteis, Deputy Budget Officer
D.C. Superior Court
personal interview March 27, 1979
43. Honorable Harriet Taylor
Associate Judge
D.C. Superior Court
personal interview January 16, 1980

44. William Taylor, Esq., Chairman
D.C. Commission on Judicial Tenure and Disability
personal interview April 23, 1980
telephone interview May 5, 1980
45. Ralph Temple, Esq.
Practicing Attorney
personal interview September 24, 1979
46. Joseph Trotter, Esq. Director
American University Criminal Courts Technical
Assistance Project
personal interview September 10, 1980
47. Robert Weinberg, Esq.
Practicing Attorney
personal interview May 5, 1980
48. Howard Westwood, Esq., Former Member
D.C. Commission on Judicial Disability and Tenure
personal interview April 29, 1980
49. Nancy Wynstra, Esq.
Former Director, Planning Division
D.C. Superior Court
personal interview June 12, 1978

Appendix B

Bibliography

- American Bar Association Commission on Standards of Judicial Administration. Standards Relating to Court Organization, Chicago, Ill., 1974.
- American Bar Association Commission on Standards of Judicial Administration. Standards Relating to Trial Courts, Chicago, Ill., 1976.
- American Bar Association Judicial Administration Division Committee. Model Judicial Article, Chicago, Ill., April 20, 1978.
- The Association of the Bar of the City of New York Special Committee on the Constitutional Convention, Selection of Judges, New York, N.Y., March 1967.
- American Judicature Society. The Extent of Adoption of the Non-Partisan Appointive - Elective Plan for the Selection of Judges, Report no. 18, Chicago, Ill., June 1969.
- The American University Law School Criminal Courts Technical Assistance Project. State Funding of Court Systems - An Initial Examination. The American University Law Institute, Washington, D.C., June 1979.
- Berkson, Larry, Susan Carbon and Alan Neff, A Study of the U.S. Circuit Judge Nominating Commission. American Judicature Society, Chicago, Ill., July 1979.
- Berkson, Larry "Unified Court" Systems: A Ranking of the States. The Justice System Journal, Vol. 3, Issue 3, Spring, 1978.
- Board of Judges of the Superior Court of the District of Columbia. Resolution in re: Mayor Marion S. Barry's 1979 Legislative Program in respect of judicial affairs., Washington, D.C., June 13, 1979.
- Burger, Chief Justice Warren E. How to Break Log - Jams in Courts, Interview U.S. News & World Report, December 19, 1977.
- California Center For Judicial Education and Research. New Trial Court Judges Orientation Program Annual Report: 1976-1977, Berkeley, Calif., January 1978.
- Church, Thomas, Jr., Alan Carlson, et al. Justice Delayed - The Pace of Litigation in Urban Trial Courts, National Center for State Courts, Williamsburg, VA., 1978.

Appendix B

- Courts Equipment Analysis Project, National Center for State Courts. Data Processing and the Courts: Guide for Court Managers, National Center for State Courts, Denver, Colo., September 1977.
- Criminal Courts Technical Assistance Project. Standards Relating to the Office of Trial Court Chief Judge. National Conference of Metropolitan Courts, 1973.
- D.C. Code Title 11 - Organization and Jurisdiction of the Courts, Noncumulative Supplement VI, 1979.
- D.C. Task Force on Public Safety and Justice, Task Force VIII The Courts - Short Team Recommendations and Supporting Data and Analysis, Washington, D.C., 1978. (Unpublished).
- District of Columbia Bar Committee on District of Columbia Courts Report on the Rule-Making Process of the Superior Court., Washington, D.C., March 23, 1977. (Unpublished)
- District of Columbia Bar Division IV Committee on District of Columbia Courts. Report on the Selection of Chief Judges. Washington, D.C., May 24, 1978. (Unpublished).
- District of Columbia Bar Committee on the U.S. District Court Report on Participation by the Unified Bar in the Rules Promulgation Process of the United States District Court, Washington, D.C., February 14, 1977. (Unpublished)
- District of Columbia Bar Committee on District of Columbia Courts Statement of Position: Designation of Chief Judges of D.C. Courts, Washington, D.C., March 1977. (Unpublished)
- District of Columbia Commission on Judicial Disabilities and Tenure. Annual Reports 1979, 1978, 1977, 1976. Government of the District of Columbia, Washington, D.C.
- District of Columbia, Government of. The Budget of the District of Columbia FY 1980. Washington, D.C., January 1979.
- Flango, Victor Eugene "An Interstate Comparison of Expenditures for the Judiciary" State Court Journal, Spring 1979.
- Franklin, Barbara A. State Judicial Training Profile, National Center for State Courts, Denver, Colo., November 1974, October 1976.
- Gurny, Ellen S. District of Columbia Court Organization Profile, National Center for State Courts, Williamsburg, VA., 1977.

Appendix B

- In Re Halleck v. District of Columbia Commission on Judicial Disabilities and Tenure, United States District Court for the District of Columbia, Civil No. 76-1985, January 26, 1977.
- The Institute of Criminal Justice and Criminology, University of Maryland. Criminal Justice Monograph: Reducing Court Delay (papers presented at Fourth National Symposium on Law Enforcement Science and Technology, May 13, 1972). U.S. Department of Justice, Law Enforcement Assistance Administration, Washington, D.C., June 1973.
- Institute of Judicial Administration. Report of Committee to Study the Role of Masters in the English Judicial System. Federal Judicial Center, Washington, D.C., September 19, 1974.
- Institute for Law and Social Research. Guide to Court Scheduling: A Framework for Criminal and Civil Courts. Washington, D.C., 1976.
- Joint Committee on Judicial Administration for the District of Columbia. Information Policy of the District of Columbia Court System, Washington, D.C., July 30, 1974.
- Knab, Karen Markle, editor, American Judicature Society Courts of Limited Jurisdiction: A National Survey. National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, Washington, D.C., January 1977.
- Lawson, Harry O., H.R. Ackerman, Jr., and Donald E. Fuller. Personnel Administration in the Courts, Criminal Courts Technical Assistance Project, The American University Law School, Washington, D.C., February 1978.
- Long, Lucinda, John P. Mayer, and Russell W. Wheeler. Some Second Thoughts About Court Administrators. Center for the Study of Federalism, Temple University, Philadelphia, PA., 1978.
- Lynch, James F., Albert H. Szal. Projecting Judicial Manpower Requirements for the State of Maryland. Institute for Court Management, Denver, Colo., March 7, 1975.
- Michigan Judicial Institute Handbook of Legal Terms, Lansing, Mich., 1979.
- Moultrie, H. Carl I., Chief Judge, Superior Court of the District of Columbia. Statement on Priorities during Tenure, Washington, D.C., July 7, 1978. (Unpublished)

Appendix B

- National Center for State Courts Survey of Judicial Salaries
Vol. 4, No. 1, Denver, Colo., January 1978.
- National Center for State Courts/Conference of State Court
Administrators. State Court Caseload Statistics: The State
of the Art. U.S. Department of Justice, National Criminal
Justice Information and Statistics Service, Washington, D.C.
August 1978.
- National Center for State Courts Northeastern Regional Office.
Administrative Unification of the Maine State Courts.
National Center for State Courts, Denver, Colo., January,
1975.
- National Center for State Courts Northeastern Regional Office.
A Unified Court System for Vermont. National Center for State
Courts, Denver, Colo., December 1974.
- Nejelski, Paul, and Russell R. Wheeler, Wingspread Conference on
Contemporary and Future Issues in the Field of Court Manage-
ment, Institute for Court Management/The Johnson Foundation,
Racine, Wis., 1980.
- New York State Commission on Judicial Conduct. Annual Report,
March 1980. Albany, N.Y., March 1, 1980.
- Nimmer, Raymond T. "Judicial Delay as a Case Study", Chapter 4
in The Nature of System Change: Reform Impact in the Criminal
Courts, American Bar Foundation, Chicago, Ill., 1978.
- Office of the U.S. Attorney for the District of Columbia,
Memorandum:
The Federal Role in the District of Columbia Criminal Justice
System. Washington, D.C., June 1979. (Unpublished)
- Polansky, Larry P. Review and Analysis of the Data Processing
Support for the Superior Court of the District of Columbia,
Criminal Courts Technical Assistance Project, the American
University Law School, Washington, D.C., September 1976.
- Polansky, Larry P. Computer Use in the Courts: Planning, Procure-
ment and Implementation Considerations, Criminal Courts
Technical Assistance Project, The American University Law
School, Washington, D.C., June 1978.

Appendix B

- Rick, Spencer, "Panel Urges Big Pay Boosts for Top Federal Officials",
Washington Post, December 17, 1980.
- Ruthberg, Miles N., and Ernest H. Short. Administration of Court Reporting in the State Courts, National Center for State Courts, Washington, D.C., February 1973.
- Short, Ernest H. and Miles N. Ruthberg, Technology and Management in Court Reporting Systems. National Center for State Courts, Washington, D.C., May 1973.
- Short, Ernest H., Francis J. Taillefer, et. al. Courts' Data Processing Action Plan for the 21st and 22nd Circuits of Missouri. National Center for State Courts. Washington, D.C., October 13, 1972.
- Skupsky, Donald S. Court Improvement through Applied Technology Project. Records Management Recommendations for the District of Columbia Superior Court. National Center for State Courts, Denver, Colo., April 1979.
- State Court Planning Capabilities Project, National Center for State Courts. Planning in State Courts: A Survey of the Art. National Center for State Courts, Denver, Colorado, July 1976.
- State Judicial Educators Association. Survey of State Judicial Education Programs 1974-1976, The American University, Washington, D.C., February 1978.
- U.S. Congress, District of Columbia Court Reform and Criminal Procedure Act of 1970, Public Law 91-358, 91st Congress, S.2601 July 29, 1970
- U.S. House of Representatives Committee on the District of Columbia, Home Rule for the District of Columbia, 1973-1974 Background and Legislative History District of Columbia Self Government and Governmental Reorganization Act, Committee Print, Washington, D.C., December 31, 1974.
- U.S. Senate, Committee on Governmental Affairs, Inquiry on the Judicial Selection Process for the District of Columbia, (contained in Report on Nomination of Peter H. Wolf, Washington, D.C., March 16, 1979.
- U.S. Senate Committee on the Judiciary Subcommittee on Improvements in Judicial Machinery. Hearing on Federal Courts Improvement Act of 1979, Washington, D.C., 1979.
- Wheeler, Russell R., A. Leo Levin. Judicial Discipline and Removal in the United States, Federal Judicial Center, Washington, D.C., July 1979.

Appendix B

Whitaker, Claire M. Court Reorganization in the District of Columbia a Comparison of the Present System with that Proposed under New Legislation, P.L. 91-358. Office of Criminal Justice Planning, Government of the District of Columbia, Washington, D.C., July 1970.

COMMITTEE REPORT

COURTS AND THE COMMUNITY REPORT
OF THE
D.C. COURT SYSTEM STUDY COMMITTEE

THE DISTRICT OF COLUMBIA BAR

May 27, 1980

Charles A. Horsky
Committee Chairman

Samuel F. Harahan
Staff Director

(937)

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
SECTION I Public Information, The Courts And The Community.....	6
A. Barriers to Public Understanding and Access.....	8
1. Barriers to Public Access to Information.....	8
2. Physical Access Barriers.....	16
3. Court Rules and Policies.....	19
4. Court Case Calendaring Inefficiencies and Barriers.....	22
5. Resistance to Better Public Understanding.....	26
B. Institutional Changes to Improve Public Understanding and Access.....	31
1. Improved Utilization of the Annual Report of the D.C. Courts.....	32
2. Publications and Programs to Increase the Public's Knowledge of Court Activities and Court Needs.....	34
3. Appointment of an Ombudsman to Assist Non-Lawyers at the Courthouse.....	37
4. Citizens' Advisory Committee.....	39
5. Court Observation Groups.....	40
6. Internal Court System Communication Methods.....	41
7. Alternative Dispute Resolution Mechanisms.....	42

	<u>Page</u>
SECTION II Access Of Special Population Groups To The District Of Columbia Courts.....	45
A. Awareness of and Services to Special Groups.....	47
B. Interpreter Services.....	50
C. Architectural Barriers.....	55
D. Public Information.....	60
SECTION III Jury Service In The D.C. Court System.....	64
A. Petit Jury.....	64
1. Length of Jury Duty.....	65
2. Juror Qualifications.....	68
3. Juror Utilization.....	70
4. Bench-Jury Relations.....	74
5. Instructing the Jury in Individual Cases.....	78
6. Prereporting Information for Prospective Jurors.....	85
7. Reception and Treatment of Jurors.....	86
8. Evaluation by Jurors.....	90
9. Future Considerations.....	91
B. Grand Jury.....	95
1. Grand Jury Description.....	97
2. Administrative Issues in the Operation of the Grand Jury System in the D.C. Courts.....	99
3. Substantive Issues in the Grand Jury Area.....	102

	<u>Page</u>
SECTION IV Witness Management And The District Of Columbia Courts.....	106
A. Current Problems with Witness Notification and Contact.....	108
1. Notification of Witnesses.....	108
2. Locating Witnesses.....	109
3. Witnesses' Courthouse Experiences.....	110
4. Subpoena Procedures and Calendaring.....	111
B. Witnesses and the Police.....	112
1. Fostering Cooperation.....	112
2. Performance Evaluation.....	113
3. Identity Verification.....	114
C. Informing the Witness.....	114
1. Witness Intimidation.....	114
2. Fees.....	115
3. Witness Feedback.....	116
D. Witness Feedback.....	117

APPENDIX A - SPECIAL POPULATIONS

- Resources for Assistance with Special Groups
- Data and Materials
- Organizations and Public Interest Groups
- Staff Training

APPENDIX B - PERSONS INTERVIEWED

APPENDIX C - BIBLIOGRAPHY

COURTS AND THE COMMUNITY REPORT RECOMMENDATIONS

	<u>Page</u>
SECTION I Public Information, The Courts And The Community	
1. <u>Recommendation: The Court Study Committee recommends that the Office of the Court Executive undertake a detailed program to provide court-related informational materials of use to the general public at the main Courthouse information counter and at the clerk's offices in the various divisions of the Superior Court and the D.C. Court of Appeals. The first major phase of such an information program should be completed by fall 1980, with appropriate English/Spanish plain language "fact sheet" literature in place for all high volume areas of public inquiry.</u>	13
2. <u>Recommendation: The Court Study Committee recommends that the main D.C. Courthouse information counter be staffed with personnel specifically trained to deal effectively with the public, and that this function be organizationally placed in the Office of the Court Executive.</u>	14
3. <u>Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration of the D.C. Court System appoint a standing Judicial Committee to develop and oversee a Court System public information policy. Appointment of such a committee will enable the Judges of the D.C. Court System to continue to be aware of and resolve the problems concerning public access to the D.C. Courts. Such a Committee should include judges from both the D.C. Superior Court and the D.C. Court of Appeals.</u>	14
4. <u>Recommendation: The Court Study Committee mends that a D.C. Court System training/orientation program be initiated for all staff of the D.C. Court of Appeals and D.C. Superior Court. The D.C. Courts' staff orientation program should contribute materially to an improved understanding by all Court staff of the purposes, location and other important aspects of the operation of the entire D.C. Court System. Such a program could be coordinated by the chief clerks of the D.C. Superior Court and D.C. Court of Appeals, and staff attendance should be mandatory.</u>	15

- | | <u>Page</u> |
|--|-------------|
| 5. <u>Recommendation: The Court Study Committee recommends that signs be placed near the street indicating the John Marshall Place entrance and over the C Street entrance to the D.C. Courthouse, and that smaller general Courthouse directional signs be located near the Judiciary Square subway entrances and adjacent to bus stops in the immediate vicinity of the D.C. Courthouse.</u> | 17 |
| 6. <u>Recommendation: The Court Study Committee recommends that signs be placed at appropriate locations directing the public to the various Court-related service agencies found in buildings in the vicinity of the new D.C. Courthouse.</u> | 17 |
| 7. <u>The Court Study Committee further recommends that large maps showing the location of Court-related buildings be placed outside of the three street level entrances to the D.C. Courthouse, in the entrance ways to other nearby public buildings, in the Judiciary Square Subway Station, and elsewhere as appropriate. The Citizens' Advisory Committee of the D.C. Bar should assist the Court leadership, as appropriate, in implementing this recommendation.</u> | 17 |
| 8. <u>Recommendation: The Court Study Committee recommends that the D.C. Court System continue its program to install signs and other directories inside each entrance to the D.C. Courthouse and on each floor. Signs and/or directories should identify high use offices, divisions and courtrooms on each floor and the location of information counters on the floor. To graphically demonstrate to the public the Court's concern for public understanding of the Court's work, the nature of the office within should be indicated on each door. At the information counter areas in the Division Clerk's offices, information should be posted indicating more specifically the work of the office and how nonlawyers can assist themselves, where appropriate. (The reader is encouraged to refer to Section II of the Courts and the Community Report on the particular problems members of the public from various special population groups have in using the Court.)</u> | 19 |
| 9. <u>Recommendation: The Court Study Committee recommends that the Superior Court Rules Committee issue an interpretation of Rule 103 to make clear to Court personnel what is and is not permissible conduct pursuant to that Rule. Such interpretation should be reiterated to Court personnel during their periodic</u> | 21 |

training programs so that all personnel clearly understand those areas in which the public has the right to receive assistance from the Court.

10. Recommendation: The Court Study Committee recommends that the Rules Committees of the D.C. Superior Court and the Court of Appeals, with assistance from the Bars and others as desired, review existing as well as proposed Court Rules and policies with a view as to their effect on the access to respective courts by the public, and that such changes as are appropriate be made. 22
11. Recommendation: The Court Study Committee recommends that consideration be given by the D.C. Superior Court leadership to the expansion of the on-call calendaring procedure to other areas beyond domestic relations. Such expansion would reduce litigants' and witnesses' waiting time at the Court with little or no apparent adverse effect on court processes. 25
12. Recommendation: The Court Study Committee recommends that consideration be given by the D.C. Superior Court leadership to instituting a "beeper" paging system for use by persons who have cases set on the trial calendar during a given day. A beeper paging system should be used in those trial calendar areas where the "on-call" procedure cannot be readily employed or in areas such as Civil II where the duration of each trial greatly varies. 26
13. Recommendation: The Court Study Committee recommends that the organized Bar and other appropriate groups be allowed to review the D.C. Superior Court's proposed case calendaring standards and related materials before they are implemented. 26
14. Recommendation: The Court Study Committee recommends that the D.C. Courts leadership including the judges of the D.C. Superior Court actively and affirmatively manage and control all cases filed in the Court to assure their timely and efficient dispatch. It is the position of the Court Study Committee that once cases are filed in the D.C. Court System it is the duty and obligation of the judges and subordinate personnel of the D.C. Courts, under the leadership of the respective chief judges, to manage and be responsible for the flow and movement of all cases. 26

- | | | <u>Page</u> |
|-----|---|-------------|
| 15. | <u>Recommendation: The Court Study Committee recommends that the Court, with the assistance of the Bar and the community, review all Court rules, forms, motions, procedures and the like to ensure that they are clear, and free of excessive legalisms and complicated sentence structure.</u> | 28 |
| 16. | <u>Recommendation: The Court Study Committee recommends that the Court leadership bring to the attention of all D.C. Court System personnel, including judges of the Superior Court and the Court of Appeals, the fact that the public is entitled to courteous treatment by Court personnel. The Court Study Committee suggests that the Court leadership and the D.C. Bar perform a periodic survey to identify those members of the Bench who are perceived as being discourteous to members of the public and that the Court leadership take steps to assure positive decorum by all judges and other Court personnel.</u> | 29 |
| 17. | <u>Recommendation: The Court Study Committee recommends that the leadership of the organized Bars, and the D.C. Court System initiate new dialogues with the electronic and print media to assure broader public information on the operation of the D.C. Court System and the legal system generally.</u> | 31 |
| 18. | <u>Recommendation: The Court Study Committee recommends that the editorial and news assignment leadership of the Washington area print and electronic media consciously review their past and proposed future activities in the area of informing the public of our court system, and that steps be taken to make any improvements as deemed necessary. Consultation by the media with bar and court leadership including the Citizens' Advisory Committee of the D.C. Bar in this process is encouraged.</u> | 31 |
| 19. | <u>Recommendation: The Court Study Committee recommends that the Court expand upon the excellent factual data presented in the Annual Report of the D.C. Courts by including more information on policy changes and policy decisions undertaken by the Court in the preceding year. Sections should be included on budget policies and problems, including the impact of budget limitations, priorities which the D.C. Court System would have addressed with more funding, and descriptions of any new programs funded. The memberships of principal court committees should be listed and their major actions summarized. Judges who lead each Division of the Superior</u> | 34 |

Court should report on major goals and activities accomplished and unmet during the year.

20.

Recommendation: The Court Study Committee recommends the Court Executive issue on a quarterly basis, information on the current status of major programs or policies both active and under consideration by the Divisions of the Superior Court and the D.C. Court of Appeals, including the Judicial Planning Committee, and where appropriate the Board of Judges. Reports where court committees are advocating major policy decisions should be available for a period of public comment by the public and Bar prior to formal adoption of the court body concerned.

37
21.

Recommendation: The Court Study Committee recommends that the Court undertake a vigorous program to inform the public and the Bar about the Court's goals in formulating the annual budget, and that the Court actively seek understanding and support for its programs.

37
22.

Recommendation: The Court Study Committee recommends that the various bar associations in the District of Columbia take a more active posture in understanding the D.C. Court's budgetary needs, and where warranted publicly support such requests before the Council of the District of Columbia, and the Congress.

37
23.

Recommendation: The Court Study Committee recommends that the Court seek funding for an ombudsman to assist litigants and others with serious law-related problems when they come to the D.C. Courthouse. The Court, the Bar and the community also should work together to obtain continued funding for the much needed information specialists program in landlord and tenant court. The ombudsman should be knowledgeable of referral sources within the city and where possible would assist in training the Court staff.

38
24.

Recommendation: The Court Study Committee urges the prompt appointment of a Citizens' Advisory Committee by the D.C. Superior Court. The Committee defers from offering any findings or recommendations about use of citizen advisory committees to the D.C. Appeal Court or to the Joint Committee on Judicial Administration.

40
25.

Recommendation: The Court Study Committee recommends establishment of an on-going Court monitoring/court support activity in the District of Columbia. Membership in such an organization should

41

include representatives of the bench, the legal, civic, and business communities and the Citizens' Advisory Committee of the D.C. Bar.

26. Recommendation: The Court Study Committee recommends that the D.C. Bar's existing assessment of the standing committee or division system of the D.C. Bar include specific consideration of the Bar's role in supporting the appropriation needs of the D.C. Court System. The Committee also urges the D.C. Bar and other groups to consider seriously development of specific approaches and devices to acknowledge and publicly recognize outstanding judicial administration contributions by judges and other Court personnel of the D.C. Court System. 41
27. Recommendation: The Court Study Committee recommends that the D.C. Courts leadership seriously consider instituting various formal and informal methods on a regular basis to inform Court employees of past and future Court programs and activities. 42
28. Recommendation: The Court Study Committee supports the existing D.C. Bar and Court System Committee examinations of alternative dispute resolution mechanisms. 43

SECTION II Access of Special Population Groups To the District of Columbia Courts

29. Recommendation: The Court Study Committee recommends that the D.C. Superior Court include in its recently established personnel training sessions a component on the needs of special groups and that the D.C. Court of Appeals increase the awareness of its personnel of the needs of special groups. This component might include instruction in such areas as identification of persons needing special assistance, appropriate methods for providing assistance, basic cross cultural skills, and court and community resources available for special groups. (User groups are often able to provide training of this nature without charge to public institutions. See Appendices A & C). 49
30. Recommendation: The Court Study Committee recommends that one area in the D.C. Courthouse, preferably at the first floor Information Desk, be designated an assistance center for special 49

groups, and that this location be staffed with a person responsible for and sensitive to the inquiries and needs of special populations.

31. Recommendation: The Court Study Committee recommends that the Court Executive compile a list of community and professional resources serving special groups and relevant to the work of the Court; that this compilation be made available for staff use in assisting the community at public information/administrative areas throughout the Court as well as in service and staff offices (See Appendix B - Distribution of Information Regarding Special Groups, and Appendix C - Resources).

49
32. Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration and the Court Executive develop policy and procedure guidelines to assist Court personnel in dealing with special groups; that such guidelines as well as resource information regarding special groups be included in the "bench books" now under consideration for use by the judicial staff.

49
33. Recommendation: The Court Study Committee recommends that the Court Executive review job categories which might be best staffed with persons who are culturally astute and fluent in a second language. Spanish and American Sign Language appear to be the most appropriate second languages at the present time. The Court may wish to consider other languages in the future. Job descriptions of Court personnel with frequent daily contact with large numbers of the public would appear to be the first priority.

49
34. Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration, the Court Executive and the Personnel Officer identify Court staff presently providing interpreter services and develop a plan whereby these persons are formally recognized and provided some additional salary compensation for the additional required services; that the Court Executive evaluate the need for establishing a formal staff position of Court Interpreter.

51
35. Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration adopt extrinsic professional standards for the evaluation of the quality of interpreters, and/or adopt a list of qualified

53

interpreters provided by professional interpreter groups. The Court might use the certification standards or lists of professional interpreter groups such as the Registry of Interpreters for the Deaf. Similar professional groups include qualified interpreters for foreign languages. The Court should also provide guidance to Judges in the Judicial Benchbooks, now under development, of when interpreters are needed.

36. Recommendation: The Court Study Committee recommends that the judges of the D.C. Court of Appeals and D.C. Superior Court, and the members and the staff of the District of Columbia Bar make every effort to become knowledgeable about the specific interpreter needs of communications impaired parties and clients, and that judges and attorneys make a cooperative effort to facilitate the use of interpreters in all judicial proceedings. 54
37. Recommendation: The Court Study Committee recommends that the D.C. Court System leadership and the District of Columbia Bar encourage the Council of the District of Columbia to adopt an interpreter statute for the District of Columbia. Such legislation would assist communication impaired persons in having qualified interpreters for judicial proceedings, as well as give policy guidance to the Court. The New Jersey and Maryland interpreter statutes, as well as the Bilingual Hearing and Speech Court Interpreter Act of 1978 may be considered as models. (See Appendix A). 54
38. Recommendation: The Court Study Committee recommends that the Court Executive develop a procedure for the utilization of interpreter services throughout the D.C. Superior Court and D.C. Court of Appeals; that this procedure be made known to persons needing an interpreter so that when necessary, they may obtain interpreters on their own rather than the Court's initiative. 55
39. Recommendation: The Court Study Committee recommends that the Court Executive direct a survey of the Courthouse physical facilities to determine architectural, tactile, and communication barriers that impede the functioning of handicapped persons in the work of the Court; and that the Court request the participation of a variety of handicapped persons in this survey in order to obtain their first-hand knowledge and experience of functional concerns. 58

- | | | <u>Page</u> |
|-----|--|-------------|
| 40. | <u>Recommendation: The Court Study Committee recommends that the Superior Court and D.C. Court of Appeals judges, supporting Court personnel, and the members of the District of Columbia Bar make every effort to encourage persons with physical or communication impairments to participate fully and efficiently in the judicial processes of the Superior Court and the D.C. Court of Appeals.</u> | 60 |
| 41. | <u>Recommendation: The Court Study Committee recommends that as the Court Executive and his staff develop a general public information program, they consider the use of methods especially designed to provide information for culturally different groups.</u> | 62 |
| 42. | <u>Recommendation: The Court Study Committee recommends that the Court make printed materials routinely used in its various branches and locations available in the Spanish language. Such printed materials include forms and instructions used in the Small Claims Branch and the information sheet distributed at Citizens Complaint Center. Many Spanish-speaking persons are married at the Court's Marriage Bureau, yet they are unable to receive a copy of their marriage certificate in Spanish. The Court might also consider the need to print summonses and similar documents in both English and Spanish.</u> | 62 |
| 43. | <u>Recommendation: The Court Study Committee recommends that the District of Columbia Bar review its public information materials for their applicability to special groups in the metropolitan area. (For example, a legal services brochure notes that "help is only a phone call away"; this publication might be amended with references for deaf consumers.)</u> | 63 |
| 44. | <u>Recommendation: The Court Study Committee recommends that, as the Court establishes a Citizens Advisory Committee, it include a representative of the Latino community and/or a representative cognizant of the needs and concerns of special groups.</u> | 63 |
| 45. | <u>Recommendation: The Court Study Committee recommends that the Court Executive consider, where possible, using volunteer agencies concerned with special groups in the work of the Court. This might be a means of providing additional services to special groups and would also involve an important segment of the community in the Court's outreach.</u> | 63 |

46. Recommendation: The Court Study Committee recommends that Latin American persons presently employed by the Court be included as public speaking resources representing the Court to the Latino and other international communities. When the judicial staff speak to school and community groups on behalf of the Court, Spanish-speaking Court employees might accompany them to appearances before Latino or international groups. 63
47. Recommendation: The Court Study Committee recommends that the Court make a special effort to inform diplomatic personnel, international students at area universities, and agencies assisting international visitors and businesspersons of its programs and services. 63
- SECTION III Jury Service In The D.C. Court System
48. Recommendation: The Court Study Committee recommends that the present two-week term of petit jury duty be reduced to one week effective immediately. 67
49. Recommendation: The Court Study Committee recommends that the Court undertake forthwith a study of the feasibility and desirability of converting the District of Columbia Superior Court to a One Day/One Trial system with judges taking direct responsibility for orientation of jurors. 67
50. Recommendation: The Court Study Committee recommends that consideration be given to limiting severely the categories of exemptions and excuses presently applicable to the D.C. Superior Court under relevant U.S. and D.C. codes in order to increase the number of persons in the community subject to jury service. The Committee urges that one of the first tasks of the Superior Court Jury Committee, recommended to be established under Section III-A-2 of this Report, be a review of existing policies and practices in the area of jury duty exemptions and excuses. The Superior Court Jury Committee should prepare recommendations in this area for consideration by the Board of Judges, the Chief Judge, and legislative authorities if statutory change is proposed. 69
51. Recommendation: The Court Study Committee recommends that the D.C. Superior Court take steps to bring the members of prospective jurors called for jury duty into closer approximation to the actual needs of the Court. 71

	<u>Page</u>
52. <u>Recommendation: The Court Study Committee</u>	71
<u>recommends that the Court give immediate consideration</u>	
<u>to the installation of an automatic telephone call-in</u>	
<u>procedure and service as a part of its petit jury system.</u>	
53. <u>Recommendation: The Court Study Committee</u>	72
<u>recommends that the size of jury panels sent to voir</u>	
<u>dire be controlled by imposing uniform Court-determined</u>	
<u>standards for various broad case types rather than leaving</u>	
<u>this determination solely to individual judges.</u>	
54. <u>Recommendation: The Court Study Committee</u>	72
<u>recommends that Court procedures and policies governing</u>	
<u>voir dire include provision for the immediate return to</u>	
<u>the jury pool of jurors challenged or excused in voir dire.</u>	
55. <u>Recommendation: The Court Study Committee</u>	73
<u>recommends that additional or supplementary jurors be</u>	
<u>called and impanelled together with regular jurors and</u>	
<u>that they be apprised of their status as alternate only</u>	
<u>when the jury retires to consider its verdict at which</u>	
<u>time the alternate jurors would be identified and dis-</u>	
<u>charged. It is the Committee's understanding that a</u>	
<u>similar procedure is followed in certain other court</u>	
<u>jurisdictions: e.g., Massachusetts, Michigan, Virginia.</u>	
<u>Such a system, often designated as an "additional juror"</u>	
<u>rather than an "alternate juror" system, is discussed with</u>	
<u>favor in the Commentary to Standard 15-2.7 of the American</u>	
<u>Bar Association's Standards Relating to the Administration</u>	
<u>of Criminal Justice (2d ed.).</u>	
56. <u>Recommendation: The Court Study Committee</u>	74
<u>recommends that a study be done on the feasibility of a</u>	
<u>central jury pool to serve both District and Federal</u>	
<u>courts, or, alternatively, a procedure for "juror-swapping"</u>	
<u>between pools.</u>	
57. <u>Recommendation: The Court Study Committee</u>	74
<u>recommends that a standing committee of judges be estab-</u>	
<u>lished to monitor the functioning of the jury system in</u>	
<u>Superior Court, and to make recommendations for improve-</u>	
<u>ment to the Court Executive and the Chief Judge. Such a</u>	
<u>Judges Committee would personally review the periodic</u>	
<u>juror evaluation reports, as well as continuously monitor</u>	
<u>the use of grand and petit jurors in the D.C. Superior</u>	
<u>Court through receipt of frequent statistical reports and</u>	
<u>specialized studies, and other devices.</u>	

58. Recommendation: The Court Study Committee recommends that the Superior Court Jury Committee develop a standardized briefing, to be given by the trial judge to prospective jurors prior to voir dire, on all pertinent subjects, including the potentially grave consequences of violations of the juror's oath and the judge's instruction. The Committee should also consider whether it is practicable and desirable to adopt certain standardized questions and cautions to be utilized by Superior Court judges during the initial phase of the voir dire. 76
59. Recommendation: The Court Study Committee recommends that the prevailing practice of barring petit juror note taking in Superior Court be re-examined and the petit jurors uniformly be allowed to take notes in the D.C. Superior Court. 77
60. Recommendation: The Court Study Committee recommends that the Superior Court adopt uniform practices to alleviate the anxiety felt by petit jurors serving in criminal cases when the defendant has ready access to specific juror home addresses while this information is being examined by his/her counsel during the voir dire proceedings. The Committee recommends that in criminal cases, juror panel lists with addresses of jurors be distributed to attorneys for use during voir dire, but that those lists be returned immediately after completion of the voir dire. 77
61. Recommendation: The Court Study Committee recommends that consideration be given by the Court to standardizing the practice of having counsel, court aides, defendants, etc., rise whenever the jury enters or leaves the courtroom. 78
62. Recommendation: The Court Study Committee recommends that a District of Columbia Bar committee undertake to rewrite the standardized jury instructions for criminal and civil cases in language which is short, simple, and readily comprehensive to average jurors. 82
63. Recommendation: The Court Study Committee recommends that the Superior Court Jury Committee conduct a thorough study of techniques to increase the effectiveness of the communication of jury instructions, including 84

(i) dividing the closing charge into segments in complex cases, (ii) asking jurors if they have any questions at the close of the charge, and (iii) making the entire charge available to the jury -- in written or tape-recorded form -- during deliberations. The Court Study Committee further recommends that the Court establish less cumbersome methods for permitting the jury to review the trial transcript when questions concerning the evidence arise during deliberations.

64. Recommendation: The Court Study Committee 86
recommends that the Court review its present procedures for briefing prospective jurors, with a view to upgrading the scope and usefulness of the information provided, especially in advance of reporting for jury duty. (Useful guidelines for such briefing can be found in A Guide to Juror Usage, LEAA/NILECJ, December 1974. See also jury briefing materials provided by U.S. District Court for the District of Columbia.)
65. Recommendation: The Court Study Committee 87
recommends that judges of the Superior Court take an active part in reviewing orientation procedures, and that the orientation information now provided in the Juror Pamphlet and in the oral instructions be combined into an updated pamphlet written in language more comprehensible to its lay readers.
66. Recommendation: The Court Study Committee 87
recommends that clear and conspicuous eye-level signs be provided in the Courthouse, especially during the first days of jury duty, to direct arriving jurors to the Jury Lounges or other point of assembly.
67. Recommendation: The Court Study Committee 87
recommends that the daily juror check-in hours be staggered (e.g. 8:00 and 8:30 a.m. on opening day and 9:00 and 9:30 a.m. on other days) in order to reduce check-in confusion and to accommodate those who, by reason of commuting distance, child care, or other problems, find the earlier deadline difficult to meet. Those opting for the earlier hour could expect (subject to the needs of the Court) to be excused earlier in the afternoon.
68. Recommendation: The Court Study Committee 88
recommends that the current informal designation of the two principal Jury Lounges as "Government" and "Non-Government" respectively be discontinued as unnecessary and confusing.

	<u>Page</u>
69. <u>Recommendation: The Court Study Committee recommends that existing recreational facilities in the Jury Lounge area (i.e., television, cards and games) be expanded by adding a selection of periodicals of general interest and a small library of paperback books.</u>	88
70. <u>Recommendation: The Court Study Committee recommends that provision be made for a more comfortable and congenial Juror's Smoking lounge than the present unattractive, uncomfortable, and windowless smoking area.</u>	88
71. <u>Recommendation: The Court Study Committee recommends that more convenient and accessible coffee service be made available for the use of waiting jurors. Coffee service is available to jurors only in the cafeteria on the lowest level of the Courthouse (four floors below the Jury Lounges) and then only until the cafeteria closes at 3:00 p.m.</u>	88
72. <u>Recommendation: The Court Study Committee recommends that adequate coat rack facilities be provided for juror use, particularly during the colder months of the year. Existing coat racks (all of which are in the so-called "Government" Lounge) are wholly inadequate in cold and inclement weather.</u>	88
73. <u>Recommendation: The Court Study Committee recommends that steps be taken to alleviate the difficulties currently encountered by sitting jurors in finding their way to and from their assigned Jury Rooms because of confusing or non-existent direction signs in interior corridors and stairways.</u>	89
74. <u>Recommendation: The Court Study Committee recommends that the needs of sitting jurors while in their Jury Rooms be provided for more adequately and attentively. There have been frequent complaints from jurors over the persistent difficulty of having their needs met for such basic items as fresh drinking water and writing materials while in the Jury Room.</u>	89
75. <u>Recommendation: The Court Study Committee recommends that rules governing use of the Juror's Dining Room be made clear to all jurors at the beginning of their jury duty.</u>	89

	<u>Page</u>
76. <u>Recommendation: The Court Study Committee recommends that every effort be made to pay juror fees within one week of the end of jury duty.</u>	89
77. <u>Recommendation: The Court Study Committee recommends that the Court maintain a more regular system of juror evaluation of jury service in order to keep itself currently informed of the opinions and sentiments of jurors regarding their utilization and treatment. Such a system should include:</u>	91
(1) <u>a jury service exit questionnaire to be filled out by all jurors at the end of their period of jury duty;</u>	
(2) <u>tabulation and analysis of responses;</u>	
(3) <u>prompt distribution of the results to judges, court administrators, and others responsible for the operation of the jury system, and</u>	
(4) <u>a follow-up procedure for providing such corrective action as may be indicated.</u>	
78. <u>Recommendation: The Court Study Committee recommends that the Superior Court institute the use of juror information sheets that include standard voir dire questions. Such sheets should be filled out by prospective jurors before voir dire commences; responses to questions of the juror information sheets should be used as a means of prescreening and striking potential jurors before the commencement of voir dire.</u>	94
79. <u>Recommendation: The Court Study Committee recommends that the Court Executive, in consultation with the U.S. Attorney's Office, review existing administrative support issues in the grand jury area and take such steps as may be necessary to remove responsibility for these services from the U.S. Attorney's Office.</u>	100
80. <u>Recommendation: The Court Study Committee recommends that the Court Executive, in consultation with the Office of the United States Attorney and presently sitting grand jurors, review the physical accommodations and comfort of the grand jury quarters and take such steps as may be required to assure that improvements are made.</u>	100

81. Recommendation: The Court Study Committee recommends that the Court consider substantially reducing the 60-day term now required of grand jurors, in order to reduce demands on individual jurors and to assure that the grand jury is representative of the community. 101
82. Recommendation: The Court Study Committee recommends that the Jury Office of the D.C. Superior Court develop and use periodic end-of-service suggestion/evaluation forms in the grand jury area. These forms should be tabulated and the results shared with the U.S. Attorney, the Chief Judge of the D.C. Superior Court and other judicial and administrative Court personnel as appropriate. Also during the period of a grand jury's service the Court periodically should inquire about any outstanding administrative or other problems jurors are having. (Unlike petit jury members who have quite frequent interaction with Court staff, the grand jurors are very isolated and need to know the Court is aware of their presence and appreciates their service to the community in this area.) 101
83. Recommendation: The Court Study Committee recommends that an ad hoc committee be appointed to examine the many substantive issues in the grand jury area and develop appropriate legislative and related findings and recommendations. The ad hoc committee should examine such issues as caseflow procedure, membership, length of service of the grand jury, the possibility for revising the definition of infamous crime, and other methods of reducing the number of cases that are processed by the grand jury. Membership on such an ad hoc body should include lay members, prosecutors, defense counsel, judges, senior administrative staff of the Court, and others as appropriate. 105

SECTION IV Witness Management And The District
 of Columbia Courts

84. Recommendation: The Court Study Committee recommends that a witness assistance unit be established in the Office of the D.C. Corporation Counsel to provide witness management services for actions brought by the Corporation Counsel such as juvenile delinquency, neglect and abuse, and intra-family proceedings. 109
85. Recommendation: The Court Study Committee recommends that the Witness Unit relieve the Assistant U.S. Attorneys of the task of notification and assume full responsibility for notifying misdemeanor witnesses. 109
86. Recommendation: The Court Study Committee recommends that maps of the courthouse be provided to witnesses when they receive notice of witness conference subpoenas. Information officers should be assigned to the witness lounges. 110
87. Recommendation: The Court Study Committee recommends that the Witness Unit institute a system for continuing periodic contact with witnesses during the interval between the crime and the trial. It would appear that such witness contact should occur at least bi-monthly. 111
88. Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office improve subpoena procedures to minimize time unnecessarily spent in court by witnesses. The Witness Unit should also institute an experimental "on call" subpoena system. 112
89. Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court set uniform standards for calendaring cases, and assure that the standards adopted reflect recognition of the problems of witness convenience. 112
90. Recommendation: The Court Study Committee recommends that a portion of police training, both pre-service and in-service, be devoted to witness management, emphasizing the vital role each officer can play in assuring witness cooperation. 113

	<u>Page</u>
91. <u>Recommendation: The Court Study Committee recommends that performance with respect to witness management be a part of the routine evaluation of the police officer's overall performance.</u>	113
92. <u>Recommendation: The Court Study Committee recommends that the Metropolitan Police Department adopt the procedure of routinely requesting verification of the identity and address of witnesses.</u>	114
93. <u>Recommendation: The Court Study Committee recommends that the Witness Unit's counseling services be made available to both felony and misdemeanor witnesses. In addition, the Court Study Committee recommends that one Witness Unit staff be specifically designated and specially trained to provide counselling services for witnesses where appropriate.</u>	115
94. <u>Recommendation: The Court Study Committee recommends that witnesses be informed at their first meeting with both police and prosecutors, and reminded at subsequent meetings, that they can receive a witness fee from the Court for their time. The Committee also suggests that current procedures for paying witnesses be reviewed to minimize inconvenience to witnesses.</u>	116
95. <u>Recommendation: The Court Study Committee recommends that the witness unit of the United States Attorney's Office complete a witness handbook and that it includes transportation maps, child care information, and the number where the Witness Unit staff can be reached. Such a witness handbook should be distributed to government witnesses by the Witness Unit, if necessary, as a matter of course to all identified witnesses. In addition, the witness handbook should be made available for defense counsel to distribute to defense witnesses.</u>	116
96. <u>Recommendation: The Court Study Committee recommends that the Witness Unit develop a questionnaire for collecting witness feedback and annually file a report on the findings resulting with the D.C. Police Department, The U.S. Attorney's Office, and the Superior Court Board of Judges.</u>	117

INTRODUCTION

The report that follows comprises the findings and recommendations of the D.C. Court System Study Committee of the D.C. Bar in the area of the courts and the community. The Court Study Committee's basic purpose has been to determine how the 1970 D.C. Court Reform and Criminal Procedures Act has worked in actual practice, and to offer procedural, statutory, and policy findings and recommendations to the Board of Governors of the D.C. Bar, to the D.C. court system leadership, and to the community. The D.C. Court System Study Committee is an ad hoc committee of the D.C. Bar appointed by Charles R. Work, the president of the D.C. Bar at that time. Throughout this report this ad hoc committee will be referred to as the Court Study Committee.

The Subcommittee on Courts and the Community was responsible for the principal investigative and analytic work leading to the Court Study Committee's findings and recommendations in this area. Subcommittee members Susan Liss, Ellen Eager, Helen Marek, Niles Bond, Robert Bates, and Charles Work, chair, were assisted in the drafting of their report by Claire Timmons in the special populations groups analysis, and by Jay Pedelty in the witness management and public information sections. Shelly Simms and Betty Wohl assisted Ms. Timmons in researching the special population groups section. Staff members of the Court Study Committee, Joe Kaiser, court systems specialist, and Samuel F. Harahan, staff director, also contributed to the report's development.

The report that follows examines four separate though interrelated dimensions of the courts and the community subject. These are 1) public information, the D.C. Courts and the community; 2) special population group access to the D.C. court system; 3) jury service in the D.C. court system; and 4) witness management.

There are other urgent public needs relating to the Court which are not covered by this Report on the Court and the Community. One such need is discussed in a report of the Committee on Civil Legal Services to the June, 1980 District of Columbia Judicial Conference. This Judicial Conference Committee Report documents this public's great need for representation for those litigants now involved in Court proceedings without counsel. The Civil Legal Service Committee report also describes the public's need for assistance in resolving disputes before they reach the litigation state. The Court Study Committee urges attention to the District of Columbia Judicial Conference Committee report.

Preceding the textual sections is an introductory piece, which sets forth some of the major findings of a recent national survey of the public's image of the courts. This national survey provides needed commentary on the public's views of state and local courts in this nation and suggests substantial potential public support for the vitally important work of the judiciary in our society were the public to be more knowledgeable about the judiciary's activities, purposes, and roles.

The Public Image of Courts

In late 1977 a national survey supported by the Justice Department's Law Enforcement Assistance Administration (hereafter LEAA) was conducted by Yankelovich, Skelly and White, Inc., a survey research organization, to assess the experiences, attitudes, beliefs and knowledge of the general American public, of community leaders, of judges, and lawyers, regarding state and local courts in the United States.¹ The Yankelovich survey report is a critically important resource for learning more about the public's views of our state and local courts and for developing strategies for meaningful improvement. While the study is not addressed to the courts of the District of Columbia per se, in general it does apply to this community. (Copies of the Yankelovich survey highlights can be ordered from the National Center for State Courts in Williamsburg, Va.)

The most significant finding of the Yankelovich survey is that there is a serious divergence of view between judges and lawyers on the one hand, and the general public and community leaders on the other, as to the role courts should play in our society. The survey report indicates that prior to the formulation of an agenda for reform of state and local

¹ Yankelovich, Skelly and White, Inc. The Public Image of Courts; Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders. National Center for State Courts, March 1978. 65 pages, Williamsburg, Va. (hereafter "Yankelovich survey").

courts, it is essential to determine which public expectations court leadership is prepared to meet, and in turn to identify more clearly those expectations that are not to be met through the courts.

Some of the more important findings of the Yankelovich survey are as follows:

- the public's confidence in the courts is not high (only 23 percent of the public expressed high confidence in state and local courts), and perhaps significantly public confidence tends to be lower among people more knowledgeable about court operations;
- the public has three core expectations of courts -- protection of society, equality/fairness, and quality performance (responsiveness, accessibility, and competence) -- which are held simultaneously by many people;
- there is considerable dissatisfaction arising from the delay and expense of litigation, and 62 percent of the public with court experience feel efficiency of the courts is a serious or very serious problem;
- Fifty-four percent of the public feel media coverage is inadequate to show how court systems really work, and seventy percent of the public want the media to do this;

- 5 -

- Sixty-three percent of the judges, but only twenty-two percent of community leaders, are extremely confident to very confident of state and local courts as a major American institution;
- courts are currently satisfying the public desire for equality/fairness better than the public desire for protection;
- the public perceives that the quality of courts hinges on the quality of judges, and it supports expending money to get quality judges.

In the text that follows pertinent references to the Yankelovich survey will appear.

The judges and other leaders of the District of Columbia courts deserve considerable praise for their cooperation, encouragement and support of external efforts such as the work of the D.C. Bar's Court Study Committee in examining the operations of the local court system under the 1970 D.C. Court Reform Act. It is through such efforts, together with internal improvement initiatives by the D.C. court system, that the operations and purposes of our courts will become consistent with the needs and expectations of the citizenry, and that the needed financial and policy support for our judicial branch of government also will be forthcoming.

SECTION I PUBLIC INFORMATION, THE COURTS
 AND THE COMMUNITY

INTRODUCTION

Courts as public bodies require acceptance and support in order to be strong and effective public institutions. Public support and public acceptance of our Courts is dependent on the Bar, the Court, and the Community each sharing fully in the responsibility for working together.

Many impediments exist to cooperation among the Bar, the Court, and the Community in improving the court system and many barriers exist to complete access by the public to the Court System of the District of Columbia. To a degree these impediments or barriers are rooted in statutory language, Court rules and the mores of the legal profession. The first subsection of the public information section that follows identifies some of the more prevalent legal, administrative, and attitudinal or policy barriers to full participation by the public in the D.C. court system and offers several specific findings and recommendations for improvement.

While there do exist impediments to effective public access and participation in the D.C. Courts, mechanisms exist which can be employed to realize more fully the goal of equal access for all before the Court. The second subsection of this discussion on public information, the courts and the community, examines some present and potential steps that the Courts, in cooperation with the community and/or the Bar might take to assure

full and efficient participation of the public in the D.C. courts, and in turn to better assure a vigorous and effective court system for this community.

The Court Study Committee has identified barriers to public access to the D.C. court system in five areas - informational access, physical access, internal court rules and policies, case calendaring inefficiencies, and in the need for institutional changes. (Some of these issues are also of very real concern in particular sections of the Court such as small claims, domestic relations, civil trials, and others. In such areas the Court Study Committee also will be offering findings and recommendations specific to those subjects and they will be set forth within the particular subject matter area in the Committee's other reports.)

The historical reasons for many of the barriers to better public access to the D.C. Superior Court and the D.C. Court of Appeals are both deeply rooted, and many faceted. In many areas, attitudes which most judges and court personnel would agree are anachronistic still determine the Court's level of effort toward providing information and services to the public. The D.C. Courts' leadership must resolve to work with the community and the Bar to eliminate existing barriers, and to guard against new barriers being erected.

A. Barriers to Public Understanding and Access

The 1970 D.C. Court Reform Act sets forth the initial framework for the D.C. court system's public information outlook and philosophy. The statute provides that the overall leadership responsibility within the D.C. court system should rest with the Joint Committee on Judicial Administration, and identifies the Office of the Court Executive as the principal public information spokesperson for the D.C. Courts. However, the statute does not place great emphasis or offer specific guidance to the Courts regarding the public information dimension of the administration of justice. Greater attention by the Court leadership is needed to meet the public's needs.

Identifying existing barriers that prevent the public access to the Court and the law must begin with an examination of the limitations on the public's ability to obtain information about the D.C. judicial system.

1. Barriers to Public Access to Information

a. Recent Public Information Initiatives

To a degree the D.C. courts' leadership has recognized the existing shortcomings in the Courthouse public information efforts. For example as a result of May 1979, LEAA grant some of the deficiencies in the signs in the D.C. Courthouse have been rectified. The new signs and directional systems are effective and dignified. In addition, Chief Judge H. Carl Moultrie I supported the Citizens' Advisory

- 9 -

Committee of the D.C. Bar in obtaining a grant from the Eugene & Agnes Meyer Foundation for a program which provides information specialists to assist litigants in Landlord and Tenant Court.

With the exception of these initiatives and a few others not described, little has been done to systematically facilitate the public's access to the services of the D.C. court system by making comprehensible information readily available. Concomitant with the Court's lack of emphasis on providing information to the public, the Court has not made full use of possible assistance from other organizations.

For example, the D.C. Bar contributed assistance to the D.C. Court leadership in the Spring, 1979, by writing, designing, and matching Court funding for a general informational pamphlet on how to use the new Courthouse. This brochure, printed in both English and Spanish, is designed for distribution at the Main Information Desk in the new Courthouse, but has not been made available to the public. In the past the Washington Urban League provided useful mimeographed information to be used in the Small Claims Court, but that is now out of print.

The American Friends Service Committee Pretrial Justice Program, using LEAA and private funding, also developed an English/Spanish pamphlet for distribution to people under arrest. The brochure entitled, "Under Arrest, What's Happening Next", assisted persons in understanding what to expect in the

initial criminal court proceedings and related events. It, too, is no longer available.

More recently, a local television station, WTOP, Channel 9, developed, printed and disseminated, at no cost to the D.C. courts, a highly useful pamphlet on filing an action in the Small Claims Courts of the Washington Metropolitan Area. WTOP-TV is to be commended on this public spirited initiative.

If there were a program of active outreach and encouragement by the Court, the Court System Study Committee believes that many other groups would assist willingly in providing court-related information to the public.

b. Informational Deficiencies

The most glaring initial informational shortcoming in the new D.C. Courthouse is at the public information counter as one enters the main Indiana Avenue entrance. The information counter dispenses virtually no informational literature. Court personnel working at the information desk are part of the Superior Court Criminal Division Clerk's Office, and are not specially trained to handle the variety of information needs of the public.

The main public information counter should be a hub of activity, with audio-visual and printed material, as well as flexible, trained personnel to assist the often ill-at-ease member of the public or the Bar with whatever his/her initial problem may be. Personal observation by Court Study Committee

- 11 -

members and staff at the Courthouse information desk revealed a very high incidence of repetitive questions ranging from where does one pay a traffic ticket, to where the Small Claims Court is located. While information counter personnel were generally pleasant in handling such inquiries, often they were not well informed. There were many occasions when people were lined up waiting for routine assistance. In the past, persons requesting more unusual information or directions were frequently misdirected or misinformed.

In addition to the main information counter, there are a number of other public counters in the D.C. Courthouse, including those at the Superior Court's Family, Civil, Criminal and Probate Divisions, and the Clerk's Office of the D.C. Court of Appeals. By and large, personnel staffing these counters are well informed about their units' operations and perform a highly useful service of informing the public. Here again, however, routine questions occupy a substantial proportion of often quite limited staff time. The more routine questions should be answered more efficiently at a far lower cost to the public through the use of printed flyers, brochures and similar material. Further, at each divisional public counter throughout the trial and appeal courts, general informational material should be available to explain the functions of the division or branch therein, as well as to address some of the more common informational problems of persons using that particular branch. (In this latter connection the Small

Claims Clerk's Office in the Civil Division and the Register of Wills Office in the Probate Division are particularly deserving of praise for the manner in which they assist the public through sample forms and related devices.)

The public coming to the D.C. Courthouse lacks basic information in a wide variety of matters, and in particular has need for more information in the following areas and at the following times:

1. at Landlord and Tenant Court;
2. at Traffic Court;
3. at Small Claims Court;
4. when receiving Court-appointed Counsel;
5. when paying bond;
6. when seeking court ordered overdue child support;
7. when seeking an uncontested divorce in which support, custody or property are not involved;
8. when serving as a juror;
9. when serving as a witness;
10. when seeking to probate estates;
11. at the Citizens' Complaint Center.

Some of these areas appear to warrant several different types of information. For example, landlord-tenant court might have information available on (1) the procedures of the court, (2) the meaning of a consent order, (3) advice on when to consult an attorney and how to find one, (4) explanation of the Rental Accommodation Commission, and (5) when to call the

Department of Human Services Landlord and Tenant Conciliation Service. Small Claims Court should have available pamphlets similar to that prepared earlier by the Washington Urban League. Small Claims Court also should have available separate one page fact sheets explaining: (1) how to file a complaint, (2) what to expect when you come to court as a plaintiff or as a defendant, (3) how to use legal services and where to find them, and (4) how to collect if a court-awarded judgment is not paid. Traffic court also needs a number of separate one page fact sheets including, in particular, one setting forth information on when to consult an attorney and how to find one. Defendants in criminal court who receive court-appointed counsel should be given a brochure explaining the procedure by which their attorney was appointed, what their attorney should do for them, how they can most effectively work with their attorney, and what to do if there are any problems.

Recommendation: The Court Study Committee recommends that the Office of the Court Executive undertake a detailed program to provide court-related informational materials of use to the general public at the main Courthouse information counter and at the clerk's offices in the various divisions of the Superior Court and the D.C. Court of Appeals. The first major phase of such an information program should be completed by fall 1980, with appropriate English/Spanish plain language "fact sheet" literature in place for all high volume areas of public inquiry.

The divisions of the D.C. Bar and the Citizens' Advisory Committee to the Bar, should provide assistance to the Court Executive in order to effect this task.

In the formulation of a detailed public information/access program, the Court Executive should consider various communication methods and devices, selecting those which appear appropriate under the circumstances. Pamphlets, audio-visual displays, video tapes, recorded telephone messages and other alternatives should be explored. (In addition, the Court Executive should consider locating ancillary services for direct use by the public at high-use areas such as the main public information counter. Placement at this location of a specifically marked direct telephone line to the D.C. Bar's Lawyer Referral and Information Service would be of considerable use to many members of the public. Having a notary public on duty also would provide a useful service to the public.) Further, the Court Executive should be permitted and encouraged to consult with and get assistance from a wide variety of sources in formulating a workable public information plan. Church groups, area universities, civic associations, court employees, businesses and professional organizations, and other sources have all been extremely helpful to the courts in other cities. These valuable resources should be solicited by the D.C. court system to contribute ideas and other support to the D.C. courts' public information program.

Recommendation: The Court Study Committee recommends that the main D.C. Courthouse information counter be staffed with personnel specifically trained to deal effectively with the public, and that this function be organizationally placed in the Office of the Court Executive.

The past and continuing practice of using Courthouse building guards as a primary information provider at the Main Information Counter has not served either the public or the D.C. Courts well due both to lack of specialized training and knowledge, and to an apparent lack of appreciation and compassion by the guards toward the public seeking such assistance.

Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration of the D.C. court system

appoint a standing Judicial Committee to develop and oversee a Court System Public Information policy. Appointment of such a committee will enable the Judges of the D.C. court system to continue to be aware of and resolve the problems concerning public access to the D.C. Courts. Such a Committee should include judges from both the D.C. Superior Court and the D.C. Court of Appeals.

An important information issue at the individual division level within the D.C. Superior Court and the D.C. Court of Appeals concerns staff knowledge of overall trial court, appeal court and Court system purposes and procedures and office locations. Personal observation of divisional court staffs who regularly serve the public reveal on the one hand a high level of competence on the part of these staffs about their own branch or unit's operations, and yet on the other a very vague knowledge of what other parts of the Court do, or even where they are physically located. Thus a person who has business in several different offices within the Court presently may have to return several times to the main floor public information counter for directions and may then be misinformed as a result of the deficiencies previously discussed.

Recommendation: The Court Study Committee recommends that a D.C. Court System training/ orientation program be initiated for all staff of the D.C. Court of Appeals and D.C. Superior Court. The D.C. courts' staff orientation program should contribute materially to an improved understanding by all Court staff of the purposes, location and other important aspects of the operation of the entire D.C. court system. Such a program could be coordinated by the chief clerks of the D.C. Superior Court and D.C. Court of Appeals, and staff attendance should be mandatory.

2. Physical Access Barriers

Presently public access to the D.C. courts' facilities is impaired in a variety of ways. Lack of exterior and interior signs and directional maps, confusing room numbering and floor level designations are among the barriers that impede the public's ability to function in the D.C. court system.

a. Exterior Signs

Members of the public that come to the Courthouse must be able to find the appropriate Court offices. The completion of the new Courthouse in 1978 centralized in one building offices that had been scattered previously in several smaller buildings around Judiciary Square. This offered the Court the opportunity to improve its services to the public, including the provision of information. However, the Court has not taken full advantage of this opportunity.

Members of the public often are intimidated and confused when coming to the Courthouse. Currently, anyone approaching the new Courthouse confronts an imposing and largely unidentified facade. In particular, members of the public coming to Landlord and Tenant and Small Claims Court are directed to use the John Marshall Place entrance, but this entrance is difficult to find. Signs at every point at which the public comes into contact with the Court would improve public access. The building and the entrances should be more clearly marked.

- 17 -

Recommendation: The Court Study Committee recommends that signs be placed near the street indicating the John Marshall Place entrance and over the C Street entrance to the D.C. Courthouse, and that smaller general Courthouse directional signs be located near the Judiciary Square subway entrances and adjacent to bus stops in the immediate vicinity of the D.C. Courthouse.

Despite the greater centralization of Court functions made possible by the new D.C. Courthouse, some important D.C. court system services and related D.C. government offices still are located in other buildings near the Courthouse. These offices and services include the Citizen's Complaint Center, the Social Services Division (Probation) of the Superior Court, the Traffic Adjudication Office of the D.C. Transportation Department, the Neighborhood Legal Services Office, and the Metropolitan Police Department Headquarters. The uninitiated citizen or lawyer who approaches the new D.C. Courthouse finds a confusing array of four or five adjacent buildings closely resembling each other, none of which is clearly identifiable or named. The deficiency in exterior signs around the Courthouse in turn contributes directly to the volume of routine questions addressed to the D.C. Courthouse public information counter.

Recommendation: The Court Study Committee recommends that signs be placed at appropriate locations directing the public to the various Court-related service agencies found in buildings in the vicinity of the new D.C. Courthouse.

The Court Study Committee further recommends that large maps showing the location of Court-related buildings be placed outside of the three street level

entrances to the D.C. Courthouse, in the entrance ways to other nearby public buildings, in the Judiciary Square Subway Station, and elsewhere as appropriate. The Citizens' Advisory Committee of the D.C. Bar should assist the Court leadership, as appropriate, in implementing this recommendation.

b. Interior Signs

Once in the Courthouse, a new visitor has difficulty locating courtrooms and other offices. Existing directional markings have only recently been improved through installation of many new and attractive signs and other directional information.

In addition, once members of the public leave the central courtyard area on each floor, better signs are needed. Major divisions and offices of the Court should have signs posted in the corridors indicating with arrows where the division offices or key court personnel are to be found. Signs should be posted on appropriate office doors, indicating for example, "Child care Nursery -- entrance next door." Similarly, a large sign in front of the information counter in each division clerk's office could serve to answer many basic questions of persons coming to these offices. (The Small Claims Clerk's Office has made initial efforts in this regard, posting sample forms and instructions. The Small Claims Clerk's Office notably also has posted a newspaper clipping of most frequently used D.C. Government telephone numbers as a further aid to the Public. Efforts such as these throughout the Court would significantly contribute to the public's awareness of the D.C. courts' endeavor to serve the public.)

Recommendation: The Court Study Committee recommends that the D.C. Court System continue its program to install signs and other directories inside each entrance to the D.C. Courthouse and on each floor. Signs and/or directories should identify high use offices, divisions and courtrooms on each floor and the location of information counters on the floor. To graphically demonstrate to the public the Court's concern for public understanding of the Court's work, the nature of the office within should be indicated on each door. At the information counter areas in the Division Clerk's offices, information should be posted indicating more specifically the work of the office and how nonlawyers can assist themselves, where appropriate. (The reader is encouraged to refer to Section II of the Courts and the Community Report on the particular problems members of the public from various special population groups have in using the Court.)

3. Court Rules and Policies

Considerable refinement has taken place in the D.C. Courts' rules and policies since the enactment of the 1970 D.C. Court Reform Act. In several areas of the D.C. court system, the Act brought about either new rules or entire revisions in the existing procedures and rules governing the conduct of the Courts' business. These rules and procedures have in turn materially contributed to the order and predictability of many aspects of the flow of individual cases. (The reader is referred to the Court Organization Report of the Court Study Committee for a more detailed examination of the rules formulation process. The reader is also referred to the other seven Court Study Committee Reports for findings and recommendations on substantive rules and procedures in such areas as family law, juvenile, civil, criminal, probate.)

There are aspects of the rules that adversely affect the public which uses our courts, and that need substantial revision or elimination. At the top of the list in this regard is D.C. Superior Court Civil Rule 103 which prohibits court employees from "practicing law". While there may be historical justification for this rule, in today's climate of pro se representation the rule serves to frustrate, rather than protect the public.

In interviews conducted by the Court Study Committee court employees expressed their dilemma - those who provide requested guidance to the pro se litigant are fearful of violating Rule 103. As a result, court employees often refer a citizen seeking what may be routine advice to an attorney, rather than answering the request, and thereby potentially violating Rule 103. In the citizen's view, however, Rule 103 appears to be used as an excuse not to be helpful. Thus, the current rule does not serve either the Court's or the public's best interest.

Interviews also revealed that some attorneys practicing before the D.C. courts contribute to the problems posed by the current Rule 103. By complaining about routine assistance and direction which those members of the court staff occasionally provide to the public, and arguing that court personnel are depriving these attorneys of their livelihood, these lawyers only serve to aggravate an already difficult situation.

The Court Study Committee realizes that the legal profession has a legitimate and understandable interest in assuring the efficient operation of the courts and also in providing effective counsel to those properly in need of it. The difficulty lies in reconciling this goal with the right of laypersons to handle legal matters on their own. The layperson also has the right to seek and receive the same level of reasonable direction and advice regarding Court processes from Court personnel as provided to attorneys.

Beyond the serious issues inherent in resolving the dilemma outlined above, it is important to appreciate the overall adverse effect on the public of the Rule 103. In contrast to this D.C. Court rule, the clerk's office of Montgomery County, Maryland court employees are instructed by statute to assist laymen coming to the court.

Recommendation: The Court Study Committee recommends that the Superior Court Rules Committee issue an interpretation of Rule 103 to make clear to Court personnel what is and is not permissible conduct pursuant to that Rule. Such interpretation should be reiterated to Court personnel during their periodic training programs so that all personnel clearly understand those areas in which the public has the right to receive assistance from the Court.

A second aspect of the rules of the D.C. Courts affecting the public concerns the opportunity of the public and the Bar to comment constructively on court rules before they become effective. Within the past two years the D.C. Court of Appeals and Superior Court adopted policies to allow

public comment and review of proposed rules before final adoption by the courts. This procedure is highly constructive and affords the Court the opportunity of receiving valuable perspectives on the possible effects of its rules. The courts are to be commended for taking this important action.

Recommendation: The Court Study Committee recommends that the Rules Committees of the D.C. Superior Court and the Court of Appeals, with assistance from the Bars and others as desired, review existing as well as proposed Court Rules and policies with a view as to their effect on the access to respective courts by the public, and that such changes as are appropriate be made.

4. Court Case Calendaring Inefficiencies and Barriers

Beyond the petit and grand jury service areas, there is no aspect of the operation of the D.C. court system that touches the daily lives of more citizens coming to our Courts than the manner in which the various trial and appeal court calendars are managed. The respective caseload systems and procedures in each court are of necessity complicated and detailed. In the D.C. Superior Court alone there are in excess of 15 different caseload processes involving such separate areas as felony, misdemeanor, traffic, juvenile delinquency, divorce, paternity and child support, adoptions, mental health, child neglect, tax, probate, small claims, landlord and tenant, and civil actions. It is remarkable that the Courts function at all when one adds the budgetary limitations and related issues to the equation. Citizen attitudes toward the D.C. courts probably parallel those of residents in

other communities. In the Yankelovich survey of public attitudes toward the courts, it was determined that some 62 percent of those surveyed who had any court experience felt that efficiency in the courts is either a serious or very serious problem.

In a study undertaken in the D.C. Superior Court Family Division by Burt Associates¹ for the D.C. Court System Study Committee, 200 randomly selected juvenile court files were analyzed. In the area of trial calendar management the study revealed that of the 25 cases in which a trial was actually held, only four trials were held on the date originally set. An average of 101 days, or more than three months, elapsed between the date originally set for trial and the actual trial date in the remaining 21 cases.

In the Small Claims Branch of the D.C. Superior Court, existing court procedures call for all small claims cases set for trial on a given day to be calendared at 9:00 a.m. The practical effect of this procedure on litigants, when as many as the 300-400 cases are set for trial on a given day, is at best a lengthy wait for many plaintiffs and defendants while the Court first considers many procedural matters, disposes of cases involving default, and finally begins to try cases sometime in late morning. The author of a 1978 National

¹ Burt, Marvin R. A Descriptive Assessment of the Processing of Juvenile Cases in the District of Columbia Superior Court. D.C. Court System Study Committee, D.C. Bar, October, 1979, 52 pages.

Center for State Courts study of some 15 Small Claims Courts around the nation -- which included the D.C. Superior Court -- told members of the Court Study Committee that calendaring practices in D.C.'s Small Claims Court were the worst among those observed. In the Civil Actions area of the Superior Court, while substantial calendar call improvements have been made in the past year, it is still the practice in the more simple civil suits (Civil II) to require all parties for every trial set on a given date to appear at 9:30 a.m. There are, of course, numerous other examples of inefficient calendar management in the D.C. courts. Many parties in addition to the Court are affected adversely by these calendaring practices.

Over the past several years the calendaring inefficiencies have been recognized and some positive steps have been taken. In the domestic relations area of the Family Division, a procedure of setting one or two cases for trial on a given day with all other cases being placed "on-call," has been tried quite successfully. In a small study conducted by the Court System Study Committee of some 100 cases handled through the on-call procedure, the results appear positive. (The Family Law Report of the Court Study Committee contains additional discussion of the on-call procedure.) In a separate context, the D.C. courts' leadership has underway a major LEAA grant-supported project to examine trial court case processes and existing backlogs. While as of the issuance of this report the court delay project's examination of Superior

Court is not complete, considerable work has taken place. One of the project's expected products is the adoption by the Superior Court of case processing standards for all its respective calendars. It is hoped that the organized Bar and its Citizens' Advisory Committee will be given ample time by the Court to review the proposed caseflow standards in every area to assure that they are both achievable and sufficient to provide efficient dispatch of all cases.

The imprecision inherent in the current calendaring system also could be made more consistent with the needs of litigants, lawyers, and witnesses if other accommodations could be made. One way to create flexibility is a court paging system. Under such a system, persons could elect to check out a "beeper" and be free to go about their daily activities until summoned by a central dispatcher. They then would be required to appear in court within a specified time period, one hour for example. In addition to the better public relations such a system would engender, the savings in areas like witness fees might exceed the cost of the system. The savings in total social costs would of course be many times greater.

Recommendation: The Court Study Committee recommends that consideration be given by the D.C. Superior Court leadership to the expansion of the on-call calendaring procedure to other areas beyond domestic relations. Such expansion would reduce litigants' and witnesses' waiting time at the Court with little or no apparent adverse effect on court processes.

- 26 -

Recommendation: The Court Study Committee recommends that consideration be given by the D.C. Superior Court leadership to instituting a "beeper" paging system for use by persons who have cases set on the trial calendar during a given day. A beeper paging system should be used in those trial calendar areas where the "on-call" procedure cannot be readily employed or in areas such as Civil II where the duration of each trial greatly varies.

Recommendation: The Court Study Committee recommends that the organized Bar and other appropriate groups be allowed to review the D.C. Superior Court's proposed case calendaring standards and related materials before they are implemented.

Recommendation: The Court Study Committee recommends that the D.C. Courts leadership including the Judges of the D.C. Superior Court actively and affirmatively manage and control all cases filed in the Court to assure their timely and efficient dispatch. It is the position of the Court Study Committee that once cases are filed in the D.C. Court System it is the duty and obligation of the judges and subordinate personnel of the D.C. Courts, under the leadership of the respective chief judges, to manage and be responsible for the flow and movement of all cases.

5. Resistances to Better Public Understanding

The final barrier to full public access to our D.C. courts relates to the resistance of the legal profession and, in turn, of the entire legal system to fostering greater public understanding. This barrier is expressed both in the language and mores of the legal profession, and, by extension, of the courts, and through the attitudes and traditional lack of openness of the law to ready public understanding.

The passage and implementation of the 1970 D.C. Court Reform Act was an important symbolic step in simplifying the

structure of the D.C. courts. The Yankelovich survey revealed that one of the main reasons for the relative invisibility of courts in this country is that, ". . . by and large, the public is unable to distinguish one court from another."

While we may have serious residual problems in this community getting the public to appreciate and use the divisions and branches of the D.C. courts, at least structurally the layout of our D.C. courts today is far simpler and more rational than before these courts were reorganized in 1971.

Beyond the structure of the D.C. Court System is the substantive and procedural law within which the courts function. To the degree that our court rules, forms, procedures, judicial orders, and other devises, materials and processes directly reflect the written statutory language, there is little that can be done by the Bar or the Court directly to facilitate better public understanding. What is possible and bears attention by the Bar, the court system and the community is to assure that court forms, motions, orders and the like are free of excessive legalisms and complicated sentence structure. While the legal profession has a legitimate concern that language in official documents has the degree of precision necessary to avoid legal uncertainty, we must not allow this concern to serve as a pretext to complicate simple legal matters so that laypersons are forced to seek legal counsel unnecessarily. For instance, an egregious example at the time this report was completed concerns the forms sent beneficiaries

just before an estate is settled requesting that they consent to the fees of executors and professionals. (The first form sent to beneficiaries is entitled "Consent Under Rule 14". Beneficiaries, or interested parties, are asked to sign the form and return it to the attorney, or to the Register of Wills. If the first form is not returned a second form, entitled, "Notice of Consent Under Rule 14" is sent. The forms do not indicate to whom or how the beneficiaries might object to the fees. The attorney files a form entitled, "Affidavit Under Rule 14" indicating that the forms were sent and not returned. The beneficiary is then assumed to have consented.)

Recommendation: The Court Study Committee recommends that the Court, with the assistance of the Bar and the community, review all Court rules, forms, motions, procedures and the like to ensure that they are clear, and free of excessive legalisms and complicated sentence structure.

The attitudinal barrier to greater public understanding on the part of the Court and the Bar is also a serious one, and one which is far more difficult to overcome. In this regard, we note that many members of the public, and many members of the Bar, in instances of a too-frequent nature are faced with routine rudeness on the part of some judges. The public, and the members of the Bar, have the right to expect service and courtesy from all Court personnel, including the judges. To the extent that Court personnel are rude and discourteous, public understanding of the Court is chilled.

This discussion by no means implies that all D.C. Court system judges and personnel treat the public discourteously. In fact, many judges and other court personnel are quite conscious of the anxiety many members of the public have about coming to Court either as plaintiffs, defendants, witnesses, jurors or interested friends. In this connection the author of the NCSC Small Claims Courts Study told members of the Court Study Committee that despite the procedural deficiencies of the D.C. Small Claims Branch, judges and subordinate court personnel in that Superior Court branch were among the most effective of the many jurisdictions examined in making court proceedings understandable to the lay public. This is commendable, and should serve as a model for other areas of our D.C. Court operations.

Recommendation: The Court Study Committee recommends that the Court leadership bring to the attention of all D.C. Court System personnel, including judges of the Superior Court and the Court of Appeals, the fact that the public is entitled to courteous treatment by Court personnel. The Court Study Committee suggests that the Court leadership and the D.C. Bar perform a periodic survey to identify those members of the Bench who are perceived as being discourteous to members of the public and that the Court leadership take steps to assure positive decorum by all judges and other Court personnel.

While the leadership of our court system and the legal profession in the District of Columbia share important responsibilities for facilitating the public's ability to use the legal system, other institutions in our society also have

vital obligations to the public in this regard. Among these are our formal educational system, and the electronic and print media. A potentially significant program in the D.C. public schools in this context is the Washington Street Law Program. Begun in 1975 through the Georgetown University Law Center, the Street Law Program now offers classroom instruction in many areas of our legal system to students at several schools and age levels.

Courts in some jurisdictions, and other public institutions such as hospitals and museums, have developed very successful programs of public outreach using volunteer assistance. Public ignorance and apprehension of the Court experience can also be lessened by using such devices as publicly available Courthouse tours, speakers bureaus, in-school programs, and similar methods.

In terms of capability to reach large segments of the public quickly, however, the electronic and print media are perhaps unequalled. The American public, in addition, appear to believe the media have important obligations to explain how courts work and to indicate whether courts are effective. In the Yankelovich survey 70 percent of the public surveyed agreed that, ". . . Media should play (an) important role in showing how the Court system really works." Seventy-one percent of those interviewed also agreed that ". . . Media should play (an) important role in showing if Court system is effective."

Recommendation: The Court Study Committee recommends that the leadership of the organized Bars, and the D.C. Court System initiate new dialogues with the electronic and print media to assure broader public information on the operation of the D.C. Court System and the legal system generally.

Recommendation: The Court Study Committee recommends that the editorial and news assignment leadership of the Washington area print and electronic media consciously review their past and proposed future activities in the area of informing the public of our court system, and that steps be taken to make any improvements as deemed necessary. Consultation by the media with bar and court leadership including the Citizens' Advisory Committee of the D.C. Bar in this process is encouraged.

B. Institutional Changes to Improve Public Understanding and Access

The preceding discussion details a variety of informational, attitudinal and procedural barriers to full public access to the D.C. Courts. Of necessity the thrust of the presentation is critical, pointing to instances and areas where additional change should take place. The discussion that follows outlines ways the judicial leadership, with the cooperation of the Bar and/or the community, can improve public understanding of our courts' services, needs and limitations, as well as facilitate public access to the courts of the District of Columbia.

Because facilitating the public's access to the Court has not been a very high priority, mechanisms to increase the public's understanding and contribution to the Court's policy making functions have not been fully developed.

In order to demonstrate their desire to serve the public, the D.C. courts must provide regular information on court activities. In turn they must establish mechanisms to receive and objectively consider comments from the public on how the courts can best perform their function in society. The implementation of such an open-communication policy requires vigorous active Court leadership -- chief judges, unit section chiefs, the Joint Committee on Judicial Administration and the Court Executive -- demonstrating by example and directive an attitude favoring the liberal exchange of information with the media and the citizenry of the District. Only when the entire leadership actively adopts this necessary attitude will it be possible to infuse the same attitude in every member of the D.C. courts' staff.

1. Improved Utilization of the Annual Report of the D.C. Courts

A good first step has been taken by the D.C. Court leadership in the past several years by using the Annual Reports of the D.C. Courts to make public significant information about the Court system. The Annual Report presents, in narrative, tabular and graphic form, much useful data about caseload demand and disposition in the various branches of the D.C. court system. It also provides, through statements by the Chief Judges, a summary of some of the significant policy changes that have occurred, and some of the important problems faced by the D.C. Superior Court and D.C. Court of Appeals. The Court leadership has not seized, however, the opportunity

to explain court problems and policies fully, or in terms that could be easily understood by the public who do not possess a broad background in judicial administration or the law.

In the Annual Report the Court should provide information about the court's budget, an evaluation of the impact of budget limitations, including an explanation of priorities which the court would have addressed with more funding, and an explanation of any new programs which were begun in the preceding year.

The Annual Report of the D.C. Courts constitutes an appropriate forum to provide information on the membership and work of the several committees of the D.C. Superior Court and D.C. Court of Appeals. The publication of this information will help dispel the impression that the Court makes policy while insulated from public scrutiny, and certainly will open up the lines of legitimate communication between various segments of the public and concerned Court officials.

The Annual Report should also provide discussion at the Superior Court level by the section chiefs of the respective court divisions concerning the goals both accomplished and unaccomplished of the respective divisions.

In planning these additional sections of the Annual Report, the D.C. court system leadership should work jointly with the Citizens' Advisory Committee to the D.C. Bar, other community groups, and others to ensure that these important materials are provided in the most useful manner.

Recommendation: The Court Study Committee recommends that the Court expand upon the excellent factual data presented in the Annual Report of the D.C. Courts by including more information on policy changes and policy decisions undertaken by the Court in the preceding year. Sections should be included on budget policies and problems, including the impact of budget limitations, priorities which the D.C. court system would have addressed with more funding, and descriptions of any new programs funded. The memberships of principal court committees should be listed and their major actions summarized. Judges who lead each Division of the Superior Court should report on major goals and activities accomplished and unmet during the year.

2. Publications and Programs to Increase the Public's Knowledge of Court Activities and Court Needs

Because the Annual Report of the D.C. Courts is issued some months after the close of the calendar year, the data presented and discussed are of principal utility for assessing long term trends and patterns of activity within the courts. The Annual Report by design lacks current applicability and information on present or planned short term court policy changes. While the Superior Court in this regard does produce monthly statistical reports on the major Divisions of the Court, these materials have been generally restricted to internal court use. The monthly report materials contain a wealth of caseload and other data of direct interest and legitimate use to various organizations and groups outside the Court itself.

A further source of detailed information about the D.C. Courts is the annual budget document. While budget

reports from governmental agencies are tedious reading, considerable information about future priorities, areas of program expansion and contraction, as well as summary statistical data, are set forth. Additionally, while the D.C. Courts' annual budget report is a public document, it is not generally reviewed, or understood in either the city's legal community or more broadly by the public at large.

The D.C. Bar, and the various voluntary bar associations appear to take little formal notice of the D.C. Courts' budgetary priorities and needs. More particularly, no formal policy or initiative appears to exist on the part of any local bar association to understand the D.C. Court's budgetary needs, and/or where appropriate to support them before the Council and the Congress.

The D.C. Courts should encourage increased public understanding and interest in the Courts' budgetary program through media, bar and civic association presentations, lay and legal public oriented written summaries, and other methods.

Beyond the periodic statistical and budget reports described above, the D.C. Courts at present have no regular means of informing the public and others of the current status of programs and policies within the court, and of the activities of various court standing committees such as the Judicial Planning Committee, the Boards of Judges and others. While many of these bodies are quite active and in turn develop policies and programs of often widespread impact on the community,

in general the public has little awareness of pending changes, or even of ongoing problems the Court may be facing.

An additional issue in this general area is the absence of focus within the Court for the provision and coordination of information sought by the public, or for release to the media, and others. Members of the bar, and public and community groups, have often been frustrated in trying to obtain from court bodies information which should be a matter of public record. The D.C. Court System should, wherever possible, respond positively to queries for information and statistics on court programs which it receives from the bar, the public, and the media.

The Court should take advantage of opportunities to work with community groups who are interested in the judicial system to affirmatively educate the public about court needs and programs. One official in the Court's Executive Office should be designated as the person responsible for facilitating responses to queries from outside the D.C. Court System. This office should also be responsible for seeking to educate the public about the Court's work on a more informal basis, through facilitating media coverage to add to the public's knowledge of the courts, through developing educational programs with the D.C. Public Schools, through encouraging statements of policy goals by the Chief Judges and other Court officials. Superior Court Chief Judge Moultrie's lengthy position paper of July 7, 1978 issued upon his taking office, is an excellent

- 37 -

example of a document which informs the public about the Superior Court's policy goals. Through such documents, the community becomes aware of future court plans, and in addition the opportunity is created to assess subsequently the effectiveness of the Court in executing its programs for improvement. A yearly "State of the Courts" declaration by both Chief Judges would also be valuable in this regard.

Recommendation: The Court Study Committee recommends the Court Executive issue on a quarterly basis, information on the current status of major programs or policies both active and under consideration by the Divisions of the Superior Court and the D.C. Court of Appeals, including the Judicial Planning Committee, and where appropriate the Board of Judges. Reports where Court committees are advocating major policy decisions should be available for a period of public comment by the public and Bar prior to formal adoption of the court body concerned.

Recommendation: The Court Study Committee recommends that the Court undertake a vigorous program to inform the public and the Bar about the Court's goals in formulating the annual budget, and that the Court actively seek understanding and support for its programs.

Recommendation: The Court Study Committee recommends that the various bar associations in the District of Columbia take a more active posture in understanding the D.C. Court's budgetary needs, and where warranted publicly support such requests before the Council of the District of Columbia, and the Congress.

3. Appointment of Ombudsman to Assist Non-Lawyers at the Courthouse

Everyday one division of the D.C. Superior Court or another encounters nonlawyers with extraordinary problems.

- 38 -

Court personnel often are not able, or do not have the time, to provide the needed advice or assistance. An ombudsman, with knowledge of those city and community agencies offering assistance, is urgently needed to provide immediate assistance in critical situations.

The grant-supported information specialists in landlord and tenant court provided essential information to plaintiffs and defendants not represented by an attorney. In landlord and tenant court, the information specialists are performing a vital function by assisting persons who would otherwise be completely puzzled and alienated by court procedures. The Court Study Committee congratulates Chief Judge Moultrie for supporting this innovative and much needed project in the landlord and tenant area by providing space for it and by providing encouragement to the Citizens' Advisory Committee to the D.C. Bar in obtaining funds for the project.

Fortunately, other courtrooms do not generate the need for as much assistance to non-lawyers as landlord and tenant court. However, an ombudsman should be available at all times to provide assistance in emergency situations.

Recommendation: The Court Study Committee recommends that the Court seek funding for an ombudsman to assist litigants and others with serious law-related problems when they come to the D.C. Courthouse. The Court, the Bar and the community also should work together to obtain continued funding for the much needed information specialists program in landlord and tenant court. The ombudsman should be knowledgeable of referral sources within the city and where possible would assist in training the Court staff.

4. Citizens' Advisory Committee

Our courts must reach out to build new links or bridges between the citizens and the court leadership. Such mechanisms have proven useful in other public administration settings to improve two-way communication and to add new ideas and perspectives. The D.C. courts must work to provide a real role for the public in the creation of court policy. Only in this way can people feel that the judicial system is truly willing to respond to the needs of the public. In his July 1978 policy statement Chief Judge Moultrie recognized that "(i)t is fundamental that citizen involvement in the workings of the government is vital for the democracy in which we live."

The creation of the Citizens' Advisory Committee supported by Chief Judge Moultrie is a necessary part of the framework for public participation. This committee, composed entirely of laypersons, should not in any way be subservient to the Court. It must remain free of judicial control or interference. The Court should keep the committee informed on a broad range of issues such as budgets and proposed policy changes. In turn, the committee should respond to these issues and raise its own proposals for improving the work of the court system. To this end the Chief Judge should insure that the Board of Judges allocates time on its regular agenda to allow the Citizens' Advisory Committee to air its concerns. The commitment to allow a Citizens' Advisory Committee a

meaningful role in advising the Court will take considerable leadership courage. Without such a meaningful role for the Citizens' Advisory Committee however, the Court would serve the public better by simply not appointing a committee.

Recommendation: The Court Study Committee urges the prompt appointment of a Citizens' Advisory Committee by the D.C. Superior Court. The Committee defers from offering any findings or recommendations about use of citizen advisory committees to the D.C. Appeal Court or to the Joint Committee on Judicial Administration.

5. Court Observation Groups

Beyond the mechanisms of Citizens' Advisory Committees to our D.C. courts is the possibility of instituting external mechanisms to monitor Court performance, reporting to the community and Court on exemplary performance or needed changes. In addition, in the District of Columbia, citizens groups and the various organized Bars traditionally have taken virtually no positive steps to support adequate governmental appropriation support for our court system.

In at least six other states organized court monitoring programs independent of court control have been set up. In New York City a group called The Fund for Modern Courts has spearheaded judicial reform efforts of many types. Supported by private foundations, law firms and occasional LEAA grants this 25-year-old organization appears to play an important supportive role for the courts of the state of New York.

One of the interesting elements of most of the court observation programs, whether operated by Leagues of Women

Voters, specially created groups such as the New York example, or otherwise, is the opportunity to report periodically to the community on specific areas of court operation or court need. This independence of position is highly desirable.

Recommendation: The Court Study Committee recommends establishment of an on-going Court monitoring/court support activity in the District of Columbia. Membership in such an organization should include representatives of the bench, the legal, civic, and business communities and the Citizens' Advisory Committee of the D.C. Bar.

Recommendation: The Court Study Committee recommends that the D.C. Bar's existing assessment of the standing committee or division system of the D.C. Bar include specific consideration of the Bar's role in supporting the appropriation needs of the D.C. court system. The Committee also urges the D.C. Bar and other groups to consider seriously development of specific approaches and devices to acknowledge and publicly recognize outstanding judicial administration contributions by judges and other Court personnel of the D.C. Court System.

6. Internal Court System Communication Methods

For court system staff to function effectively, they must be well informed of ongoing programs and activities throughout the courts, in addition to the more rudimentary knowledge of the various divisions, branches and units making up the two D.C. courts. Courts in other communities have employed methods ranging from employee newsletters to mandatory monthly divisional-level employee staff meetings.

The initiative Chief Judge Moultrie demonstrated in having a series of breakfast meetings with Court employees was one excellent method of facilitating intra-court communication.

The Superior Court's recently instituted quarterly training days for both judges and all other court staff also appears to have proven beneficial and should be retained and expanded in scope.

Recommendation: The Court Study Committee recommends that the D.C. Courts leadership seriously consider instituting various formal and informal methods on a regular basis to inform Court employees of past and future Court programs and activities.

7. Alternative Dispute Resolution Mechanisms

The 1970 D.C. Court Reform Act provided several avenues for some types of cases to be handled through procedures other than a formal trial. By and large, however, until very recently little effort has been made by the D.C. courts to explore seriously alternative dispute resolution methods.

There is considerable support in the American public for courts to use alternatives to formal court trials. The Yankelovich survey states in this regard that, sixty-six percent of those surveyed believe it would be very helpful (or) helpful to spend tax dollars to develop ways to settle minor disputes without going through formal court proceedings. The survey states that ". . . as the seriousness of a case increases, people are less likely to prefer an alternative to court." In those jurisdictions where they are employed, alternatives to formal court proceedings afford the public, in most instances, the opportunity to resolve their disputes in less time for lower cost. For minor disputes it is often

possible for the public to achieve resolution without retaining legal counsel.

In addition, in disputes including divorce, where there are children, custody and support, parties are usually best served by a peaceful settlement which is as agreeable as possible to all parties. The Court should encourage referral to a mediation service, rather than to opposing lawyers, who because of the adversarial process, often encourage the parties involved to dispute rather than settle.

The Court Study Committee takes note of the several existing initiatives by the Bar and the D.C. court system to explore alternatives to formal Court proceedings for various types of cases. It is important to ensure that the advantages and disadvantages of these methods of broadening public access to the Court are fully considered. (Reports of the Court Study Committee in the Civil Trial, Statutory Courts, and Family Court areas examine the issue of alternative dispute resolution in the D.C. Courts in greater depth.)

Recommendation: The Court Study Committee supports the existing D.C. Bar and Court System Committee examinations of alternative dispute resolution mechanisms.

Concluding Statement

The public frequently is dissatisfied with the operation of the judicial system. Without public confidence and support, courts cannot perform their function in our society. This public dissatisfaction stems partly from a lack of information explaining why courts must operate as they do

and partly from the judicial system's insensitivity to the needs of the public it serves.

The D.C. Court System is in an excellent position to grapple with both these problems. The leadership of the D.C. courts has stated a willingness to serve the public and to involve the public more actively in the operation of the courts. This willingness must be reflected in the courts' policies and practices.

Implementing the recommendations set forth in this Section of the report will lead to several beneficial policy changes. As important as the immediate policy changes is the shift in perspective that inevitably will result as the Court begins to view its operations more through the eyes of the general public. It is hoped that this shift in perspective will lead to continuing reappraisal and improvement.

SECTION II ACCESS OF SPECIAL POPULATION GROUPS
 TO THE DISTRICT OF COLUMBIA COURTS

INTRODUCTION

The new District of Columbia Courthouse presents an architectural symbol of the availability of justice for all residents of this City. Its wide plaza, bright interior, and spacious courtrooms seem to ask the public in, to invite citizens to be active participants in the day-to-day work of the Court. But like any cultural symbol, this one speaks best to those citizens who are familiar with, and function well, in the environment it creates. The symbol is less meaningful to persons whose access to the Court is limited or impaired. The purpose of this Section of the Courts and the Community Report is to identify special groups for whom access to D.C. Courts is limited, to determine the functional barriers that block both their access to justice and the efficient work of the Court, and to identify ways in which these groups may be better served by Court personnel.

District of Columbia demographic statistics indicate that more than 10 percent of the city's population is over 65; more than 15 percent over 60. Approximately 56,000 District residents are handicapped (deaf, blind, or mobility impaired). There are 131,000 handicapped adults in the metropolitan Washington area; 116,000 more in metropolitan Baltimore. Many of this number represent the large deaf community that lives in the Parkway corridor. Reliable estimates show that the

resident Spanish-speaking community in the District of Columbia numbers close to 75,000. Another 40,000 internationals make their home in the Washington area as embassy personnel, businessmen or foreign students. (While legal problems of the diplomatic corps are usually handled by the State Department, more than 12,000 diplomatic related personnel may be affected by a recent legislation requiring them to carry automobile liability insurance . . . a potential source of local litigation). Representatives of each of these groups -- the elderly, handicapped, resident ethnic groups, and internationals -- have regular business before the Superior Court and the D.C. Court of Appeals.

These special groups fall into two functional categories, which may sometimes overlap. The elderly and handicapped may be called physically impaired; for them the Court must be made mobility accessible. Ethnic and international groups may be called communication impaired as well as culturally different; for these persons the language and procedures of justice must be made understandable. Many hearing impaired persons belong to both groups, for they are both physically and communication impaired. In some cases, they are culturally different as well.

The recommendations set out in this section address ways in which the Court may increase its awareness of, develop helpful attitudes toward, and provide appropriate services for special populations. Attention has been given to ways in

which these goals may be accomplished through basic procedural changes and ongoing staff education, with a minimum expenditure of public funds. The Court Study Committee's recommendations fall into four areas: I. Awareness of and Services to Special Groups, II. Interpreter Services, III. Architectural Barriers, and IV. Public Information. Recommendations are based on information gained from conversations with members of special population groups, an analysis of present activities in the various divisions of the Court, and the previous professional experience among foreign nationals and handicapped persons of a consultant to the Court Study Committee. The recommendations are intended to encourage the Court, as it reviews its services for and interaction with the citizens of the District of Columbia, to become more cognizant of the particular service needs of these distinctive elements of our population.

A. Awareness of and Services to Special Groups

Court systems sometimes appear to be cultures unto themselves. The "legalese" spoken by judges, attorneys and court personnel is a foreign language to most English-speaking laypersons. Many people feel unable to function well in the legal arena until they have learned some of the language of the law and have become familiar with procedures of the court. Without this knowledge, laypersons stand "a step away from justice." Persons who are physically or communication impaired are "two steps away from justice" -- their functional handicaps

must be taken care of before they are able to begin learning the ways of the court. Elderly persons, for example, can be quite uncomfortable sitting for long periods of time in a court waiting room. Persons confined to a wheelchair may be unable to participate fully as jurors or witnesses as they cannot get into the jury box or take the witness stand. Deaf persons need to know how to obtain an interpreter; Spanish speaking persons minimally proficient in English must ask directions of court personnel who speak their native language. Internationals may need assistance in understanding procedures different from those with which they were familiar at home.

The Court's goal should not be the provision of a great deal of special or individualized attention to members of special groups, but rather to provide assistance with basic concerns so that these persons may function as independently as possible. Court personnel interviewed for this study expressed concern and interest in the needs of special groups, but indicated that they lacked skills and resources to deal with these populations. Many interviewers expressed interest, however, in upgrading knowledge of the handicapped and culturally different, and in providing more uniform services for these groups throughout the Court. The Joint Committee on Judicial Administration and the Court Executive are encouraged to transform this interest into a positive, evident, and even attitude toward special groups using the local judicial system.

- 49 -

Recommendation: The Court Study Committee recommends that the D.C. Superior Court include in its recently established personnel training sessions a component on the needs of special groups and that the D.C. Court of Appeals increase the awareness of its personnel of the needs of special groups. This component might include instruction in such areas as identification of persons needing special assistance, appropriate methods for providing assistance, basic cross cultural skills, and court and community resources available for special groups. (User groups are often able to provide training of this nature without charge to public institutions. See Appendices A & C).

Recommendation: The Court Study Committee recommends that one area in the D.C. Courthouse, preferably at the first floor Information Desk, be designated an assistance center for special groups, and that this location be staffed with a person responsible for and sensitive to the inquiries and needs of special populations.

Recommendation: The Court Study Committee recommends that the Court Executive compile a list of community and professional resources serving special groups and relevant to the work of the Court; that this compilation be made available for staff use in assisting the community at public information/administrative areas throughout the Court as well as in service and staff offices (See Appendix B - Distribution of Information Regarding Special Groups, and Appendix C - Resources).

Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration and the Court Executive develop policy and procedure guidelines to assist Court personnel in dealing with special groups; that such guidelines as well as resource information regarding special groups be included in the "bench books" now under consideration for use by the judicial staff.

Recommendation: The Court Study Committee recommends that the Court Executive review job categories which might be best staffed with persons who are culturally astute and

fluent in a second language. Spanish and American Sign Language appear to be the most appropriate second languages at the present time. The Court may wish to consider other languages in the future. Job descriptions of Court personnel with frequent daily contact with large numbers of the public would appear to be the first priority.

B. Interpreter Services

Language is the primary tool of the legal system. Justice is based upon the assumption that facts will be fully presented; determination of truth requires that all participants in a court proceeding communicate clearly and receive information accurately. The defendant in a criminal case who does not speak English is constitutionally entitled to an interpreter, and as a matter of judicial discretion this right has been extended where possible to other forms of litigation. Present statutory trends encourage the provision of interpreters for all parties as well as for witnesses in judicial proceedings (Annotated Code of Maryland, art. 27, § 9-114; Bilingual Hearing and Speech Court Interpreter Act, Pub. L. No. 95-539). The communication needs of judge, jury, and attorneys are also important. Further, accurate communication is as important to persons utilizing the routine administrative procedures of the Court as it is to those involved in formal courtroom proceedings.

Several members of the D.C. Superior Court staff routinely provide competent interpreting services for Spanish-speaking persons involved in formal Court proceedings or

administrative matters and the court is to be commended for this. These Court staff provide a significant public service, but unfortunately they are neither formally recognized nor compensated for their interpreting skills. Further, requests for interpreter services are added to the regular work load of these persons, most of whom hold busy supervisory positions.

Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration, the Court Executive and the Personnel Officer identify Court staff presently providing interpreter services and develop a plan whereby these persons are formally recognized and provided some additional salary compensation for the additional required services; that the Court Executive evaluate the need for establishing a formal staff position of Court Interpreter.

Public institutions that use interpreters must deal with two basic questions: (1) When, and for whom, is an interpreter needed?, and (2) Is the interpreter qualified? Court user groups are especially concerned about these issues and the potential abuses of justice they may involve. Several points were stressed by the groups interviewed. Minority groups feel that law enforcement officers and judicial personnel find it a nuisance to deal with a person who needs an interpreter; consequently, witnesses are dropped, cases are not papered, and in some instances an impaired defendant is released without a hearing, not understanding what transpired or why. If an impaired party comes to a preliminary hearing without an interpreter, some judges may request makeshift interpreting arrangements rather than grant a continuance so

that a qualified interpreter can be obtained. These arrangements may include asking or allowing an attorney to literally speak for his client, or requesting that the attorney be both advocate and interpreter. These methods result in role confusion for the lawyer, open the impaired party to challenge by the other side, and deprive the communication impaired person of a right to speak on his own behalf. Of most concern, an impaired person's need for accurate communication may become the object of legal maneuvering between plaintiff and defendant. Persons who have limited knowledge of English or who are partially hearing impaired are especially vulnerable to the challenge from the opposing party that, as they do not use an interpreter in "everyday life", they do not need one in court. "Everyday life" must be distinguished from situations in which accurate communication is imperative. For example, foreign students may come to the United States to visit, but universities will not allow them to register for classes until their English language skills have reached a high level of proficiency. Similarly, a hearing impaired person might go to the grocery store without an interpreter, but he would not conduct important business matters or discuss surgery with his doctor without communication assistance. The need for accurate communication and interpreting services normally should not be open to question or challenge in court proceedings. Good communication is imperative and in the best interests of all concerned.

Interpreter quality is crucial in the courtroom. Interpreters vary a great deal in their level of fluency, proficiency in "legalese," and knowledge of idiomatic expressions and cultural assumptions of the person for whom they are interpreting. Embassy personnel are not always familiar with street Spanish; a person reasonably skilled in manual communication cannot necessarily handle the fast-paced, language-specific needs of a formal court proceeding. Regrettably, skilled interpreters often charge fees that many communication impaired persons cannot afford. This has led some jurisdictions to adopt legislation not only requiring the use of qualified interpreters at all judicial proceedings, but also authorizing payment of such interpreters from state funds. (Annotated Code of Maryland, art. 30, § 1.)

Determination of interpreter need and interpreter qualifications traditionally have been a matter of judicial discretion -- yet this tradition requires that judges make decisions in an area about which they cannot be expected to be fully knowledgeable. By way of comparison, judges must determine that expert witnesses, like interpreters, are fully competent to provide the services necessary and helpful to the court. But whereas the court recognizes extrinsic, professional, standards for the evaluation of expert witnesses, it has no such criteria for the evaluation of interpreters.

Recommendation: The Court Study Committee recommends that the Joint Committee on Judicial Administration adopt extrinsic professional standards for the evaluation of the

quality of interpreters, and/or adopt a list of qualified interpreters provided by professional interpreter groups. The Court might use the certification standards or lists of professional interpreter groups such as the Registry of Interpreters for the Deaf. Similar professional groups include qualified interpreters for foreign languages. The Court should also provide guidance to Judges in the Judicial Benchbooks, now under development, of when interpreters are needed.

Recommendation: The Court Study Committee recommends that the judges of the D.C. Court of Appeals and D.C. Superior Court, and the members and the staff of the District of Columbia Bar make every effort to become knowledgeable about the specific interpreter needs of communications impaired parties and clients, and that judges and attorneys make a cooperative effort to facilitate the use of interpreters in all judicial proceedings.

Recommendation: The Court Study Committee recommends that the D.C. Court System leadership and the District of Columbia Bar encourage the Council of the District of Columbia to adopt an interpreter statute for the District of Columbia. Such legislation would assist communication impaired persons in having qualified interpreters for judicial proceedings, as well as give policy guidance to the Court. The New Jersey and Maryland interpreter statutes, as well as the Bilingual Hearing and Speech Court Interpreter Act of 1978 may be considered as models. (See Appendix A).

There is presently no procedure for obtaining an interpreter for proceedings at the D.C. Superior Court, unless the interpreter is obtained through the Criminal Justice Assistance Program for indigent criminal defendants. Most persons needing an interpreter do not know how to arrange for language assistance at court; the proceedings may be delayed while the matter is worked out. The lack of procedure also

complicates payment of interpreters when they are negotiated through a referral agency rather than directly by the impaired person.

Recommendation: The Court Study Committee recommends that the Court Executive develop a procedure for the utilization of interpreter services throughout the D.C. Superior Court and D.C. Court of Appeals; that this procedure be made known to persons needing an interpreter so that when necessary, they may obtain interpreters on their own rather than the Court's initiative.

C. Architectural Barriers

The new Courthouse was designed in accordance with the provisions of the D.C. White Cane Law (Publ. L. No. 92-515). Court officials feel that the building is in basic compliance with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that handicapped persons must have equal opportunity to participate in or be employed by programs receiving federal financial assistance. Section 504 which has been called the civil rights act for the handicapped extends the accessibility requirements set out in the Architectural Barriers Act of 1968, and broadens the scope of enforcement available to the Architectural Barriers Compliance Board. Its definition of handicaps and handicapping conditions is quite broad. Its "reasonable accommodation" standard requires that a facility as a whole, rather than each individual part of a building, be accessible to the handicapped. It uses the specifications for handicapped accessibility set out by the

American National Standards Institute. The architectural barriers concept as understood under Section 504 includes not only impediments to the physically impaired, but communication barriers limiting the deaf, blind, and communication disabled.

The D.C. Court System has a difficult task in monitoring its compliance under the applicable provisions of the barriers acts, and in addressing public interest in this matter. Architectural changes are expensive. Because the White Cane law lacks specific accessibility standards, architects designing the Courthouse provided basic but incomplete facilities for the physically impaired. Because the concept of architectural barriers is fairly new, courts and other public buildings lack "use experience" to guide them in making improvements. Handicapped persons, unable to use the building independently and well, presently can make only a limited contribution to the Court's knowledge about these barriers. The Court might approach this dilemma better by shifting its focus from compliance to functionability. Handicapped citizens using our D.C. Courts, many of whom are lawyers, have much to contribute to the judicial process. Functional barriers impede their participation and slow down the work of the Court.

In a recent article in District Lawyer (Dec./Jan. 1978, vol. 3 no. 3), Charles Goldman notes that while physical facilities of the Court are in technical compliance with architectural barriers standards, they remain functionally

inaccessible for persons in wheel chairs. The Indiana Street entrance is ramped, but opening the non-electric Courthouse door requires considerable manual strength. Elevators are accessible from the basement, but parking for the wheelchair-bound person is not accessible to the elevator. Restroom sinks are wheelchair height, but towel dispensers are out of reach. The cafeteria is spacious, but a person confined to a wheelchair cannot reach items on the self-service counters. In short, a wheelchair-bound person cannot function independently in the Courthouse. Goldman also notes that there is very little tactile identification of court facilities for the assistance of blind or visually impaired persons.

A tour of the Court by two handicapped persons who assisted in preparation of this section of the Court Study Committee's report indicated accessibility concerns more directly related to the processes of justice. While courtrooms have wide aisles and wells that can accommodate a wheelchair, neither jury boxes nor witness stands are ramped or specially accessible. Wheelchair-bound witnesses have to sit in the well, where they cannot be observed or heard properly by jurors. A wheelchair-bound juror could sit below the jury box, but could not easily negotiate a wheelchair through the well to the juror room at recess or for deliberation. Similarly, the John Marshall Place area was designed so that it could be made available to the public for convenient pro se transactions at times when the rest of the building was closed.

Physically impaired persons could not benefit from such community-convenient hours, because the stepped John Marshall Place entrance is largely inaccessible.

Recommendation: The Court Study Committee recommends that the Court Executive direct a survey of the Courthouse physical facilities to determine architectural, tactile, and communication barriers that impede the functioning of handicapped persons in the work of the Court; and that the Court request the participation of a variety of handicapped persons in this survey in order to obtain their first-hand knowledge and experience of functional concerns.

Each of us at one time or another may be temporarily disabled. Persons on crutches, in a cast, or suffering pain from an accident may need to use the services of the Court or participate as a witness or juror. These disabilities are usually visually apparent, and the judicial staff in particular seems to note and accommodate individual needs -- for example, a juror in a leg cast may be most comfortable at the end of a row rather than in the middle of the jury box.

Partial impairment, which might include hearing loss, limited vision, or speech and communication difficulties, may not be apparent. Partially impaired persons think of themselves as able bodied -- their impairments are individualized and often functionally correctable; they tend not to ask for assistance unless dealing with a matter where communication is of utmost importance. The Court and members of the Bar can encourage effective communication where partially impaired persons are involved in legal and judicial proceedings.

Hard-of-hearing jurors will be able to follow a trial better if they sit near the witness stand, and if attorneys speak toward them as much as possible rather than pacing about the courtroom. Witnesses with speech problems may need to progress slowly through their testimony. Attorneys who have tunnel vision or who depend upon lip reading to aid their hearing may need to position themselves in the best relation to courtroom lighting and in view of the parties.

As we age we become progressively less able bodied. The elderly are thus especially vulnerable to temporary disability and partial impairment. It is often difficult for the elderly to get to court, and to sit and wait once there. Hearing, visual or mobility constraints may impede their participation in Court activity, yet elderly persons are among the most prominent users of the Court. Many are low-income persons who often use pro se services. Many are victims of crime and need to appear in Court as witnesses. Many are retired, available for the jury pool, and want to contribute their services to the Court.

Attorneys may be helpful in bringing the needs of their clients and others with impairments to the attention of the presiding judge. An open attitude on the part of the judicial staff will encourage such persons to use courtroom space and communication processes to their maximum advantage. Good communication will thus assist all persons involved in the proceedings.

Recommendation: The Court Study Committee recommends that the Superior Court and D.C. Court of Appeals judges, supporting Court personnel, and the members of the District of Columbia Bar make every effort to encourage persons with physical or communication impairments to participate fully and efficiently in the judicial processes of the Superior Court and the D.C. Court of Appeals.

D. Public Information

There is great potential among the citizens of the District of Columbia for support and interest in the activities of Superior Court and the D.C. Court of Appeals. Such interest is strong among user groups representing the elderly, handicapped, language impaired, and international segments of the community. These persons appreciate the need for Courts and other public institutions to provide facilities and services appropriate for the majority of the citizenry. But while they feel a responsibility to accommodate themselves as much as possible to practices established for the majority, they are concerned that the Superior Court and the D.C. Court of Appeals appear to have little interest in the needs of persons who are neither able bodied nor part of the "mainstream" culture. One member of the District's Latino community stated this concern quite concretely: "It may be financially unrealistic to expect the city to provide bilingual signs throughout the Courthouse, but just one Spanish sign in the lobby would recognize our existence as part of this metropolitan community."

Participation in any public activity requires extra effort on the part of impaired persons. This is especially true for those who are communication impaired or culturally different, for they are profoundly disoriented in the court environment. An outreach to these groups can alleviate some of this disorientation and make culturally different individuals more comfortable in using the Court. It may also encourage those who do not presently participate in the judicial system to do so.

It was heartening to discover the Court's interest in providing the public with Spanish materials and to review Spanish language Court information brochure developed by the D.C. Courts and District of Columbia Bar. This brochure should immediately be made available to the public. Outreach to the resident Latino community is important not only because of the large size of this group, but also because it is comprised of many small businessmen and low-income persons who have need to use the pro se services of the D.C. Courts. The Joint Committee on Judicial Administration and the Court Executive are encouraged to consider additional ways in which the Latino community might be included in public information and outreach programs. A small gesture to this particular group can produce broad community effect, for in recognizing the existence of the Latino community, the Court also indicates its cognizance of other internationals in the city. In a like manner, provision of information services for one handicapped

group -- for example, a teletypewriter machine (TTY) for the deaf at the lobby Information Desk -- indicates cognizance of all handicapped groups.

Recommendation: The Court Study Committee recommends that as the Court Executive and his staff develop a general public information program, they consider the use of methods especially designed to provide information for culturally different groups, including:

1. Bilingual (English-Spanish) signs in the main lobby and in high volume public access areas of the Court (See Appendix B, public information/administration areas and court-related services.
2. Signs indicating the presence of Court personnel who speak a second language ("Se habla espanol" or "One of our staff uses American Sign Language -- please ask for assistance").
3. The use of symbols and other language-neutral devices to indicate basic services such as the cafeteria and restrooms.
4. Spanish language versions of selected written public information materials about the Court.
5. A telephone recording in both English and Spanish that provides general information about the Court.
6. Use of a teletypewriter (TTY) or Manual Communication Module (MCM) for telephone communication with hearing impaired persons so that they may call in to request information about Court proceedings or services.

Recommendation: The Court Study Committee recommends that the Court make printed materials routinely used in its various branches

and locations available in the Spanish language. Such printed materials include forms and instructions used in the Small Claims Branch and the information sheet distributed at Citizens Complaint Center. Many Spanish-speaking persons are married at the Court's Marriage Bureau, yet they are unable to receive a copy of their marriage certificate in Spanish. The Court might also consider the need to print summonses and similar documents in both English and Spanish.

Recommendation: The Court Study Committee recommends that the District of Columbia Bar review its public information materials for their applicability to special groups in the metropolitan area. (For example, a legal services brochure notes that "help is only a phone call away"; this publication might be amended with references for deaf consumers.)

Recommendation: The Court Study Committee recommends that, as the Court establishes a Citizens Advisory Committee, it include a representative of the Latino community and/or a representative cognizant of the needs and concerns of special groups.

Recommendation: The Court Study Committee recommends that the Court Executive consider, where possible, using volunteer agencies concerned with special groups in the work of the Court. This might be a means of providing additional services to special groups and would also involve an important segment of the community in the Court's outreach.

Recommendation: The Court Study Committee recommends that Latin American persons presently employed by the Court be included as public speaking resources representing the Court to the Latino and other international communities. When the judicial staff speak to school and community groups on behalf of the Court Spanish-speaking Court employees might accompany them to appearances before Latino or international groups.

Recommendation: The Court Study Committee recommends that the Court make a special effort to inform diplomatic personnel, international students at area universities, and agencies assisting international visitors and businesspersons of its programs and services.

SECTION III JURY SERVICE IN THE D.C. COURT SYSTEM

A. Petit JuryINTRODUCTION

The following section on the petit and grand jury systems of the District of Columbia embodies the views and recommendations of the Court Study Committee based on an examination of the current management and operation of those systems.

The jury system affects the community in various ways, the most obvious being its impact on the daily lives of individual jurors during the periods of their jury service. In 1978, for example, summonses for petit jury service went to 14,800 persons, of whom 7,287 were enrolled for 2 weeks of jury service. An equally important aspect is the dollar cost to the community of operating a jury system. In D.C. Superior Court, the direct cost in petit jury fees alone is estimated to be in excess of \$1.5 million per year. There can be little doubt, therefore, that a jury system operated efficiently -- in fiscal as well as human terms -- is a matter of genuine interest to the community.

Since 1978, improved physical accommodations of the new District of Columbia Courthouse have served to make jury service in Superior Court more convenient and more comfortable for jurors. The Committee believes, however, that certain additional steps should be taken to make even better and more

effective use of the Court's new quarters, and has made recommendations accordingly. Other recommendations of the Committee in the jury area relate to subject areas largely independent of the physical accommodations of the Court.

The Committee's recommendations, and the discussion leading to such recommendations, have been organized under the following headings: 1. Length of Jury Duty, 2. Juror Qualifications, 3. Juror Utilization, 4. Bench-Jury Relations, 5. Prereporting Information for Prospective Jurors, 6. Reception and Treatment of Jurors, 7. Evaluation by Jurors, and 8. Future Considerations.

In all of its contacts with Superior Court personnel, including judges and administrators, during the compilation of this analysis, representatives of the Court Study Committee have received willing cooperation and patient assistance. The same has been true of its more limited contacts with the U.S. District Court for the District of Columbia and with other consultants outside the court systems.

1. Length of Jury Duty

The advantages of shortened petit jury duty have become widely recognized in recent years. Shorter terms have made it possible for more persons to share the experience of jury service, and to serve with less disruption of their daily lives. Fewer prospective jurors have needed to be excused from service, and those who have served have tended to be left with a more positive attitude toward the experience.

While the period of petit jury service in the District of Columbia was reduced in 1977 from 30 days to two weeks, the Committee believes that a further reduction is warranted. A term of one week has been recommended by the model code of the National Conference of Metropolitan Courts.

A more drastic reduction of the jury term to one day (or one trial, whichever is longer) recently has received increasing attention and support. This "One Day/One Trial" system already has been introduced successfully into several jurisdictions in the country, including the Washington D.C. Suburb of Montgomery County, Maryland. In the larger jurisdictions of Wayne County (Detroit), Michigan and Harris County (Houston), Texas, it has saved money, improved juror utilization and attitudes, and broadened citizen participation in the jury process. Some jurisdictions using the One Day/One Trial petit jury system have actually reduced or eliminated jury service fees all together. In these jurisdictions jurors are reimbursed for transportation expenses, but receive a daily fee for serving on the jury only when the trial length exceeds two days.

The One Day/One Trial system does require special backup arrangements not needed under other systems, including access to adequate computer facilities to handle the heavy transactional volume involved in calling new jury pools on a daily instead of a weekly, bi-weekly, or monthly basis. (The

Committee has received conflicting opinions as to the capability of the D.C. Courthouse computer facilities to handle a One Day/One Trial jury system.)

The Committee feels that a successful One Day/One Trial system depends not only on computer capacities but also on the excellence of juror orientation, which appears to be most effective when judges themselves handle the orientation. In some One Day/One Trial courts (e.g., Harris County, Texas), the judges take full responsibility for juror orientation by speaking to the assembled jurors before the jurors are sent off to trials. The judges assume the responsibility of making novice jurors feel comfortable, knowledgeable, and confident before entering a courtroom. The general orientation consists of a talk by a judge (judges serve on a rotating basis), which is augmented by legal information given in two parts: general written data goes to each juror at the beginning of a trial, and written data specific to that trial is given by the jurors as they go into deliberation.

The District of Columbia is fortunate in having access to expert advice on One Day/One Trial from the Center for Jury Studies (in McLean, Virginia), and the District of Columbia Court Executive Larry Polansky.

Recommendation: The Court Study Committee recommends that the present two-week term of petit jury duty be reduced to one week effective immediately.

Recommendation: The Court Study Committee recommends that the Court undertake forthwith a study of the feasibility and desirability of converting the District of

Columbia Superior Court to a One Day/One Trial system with judges taking direct responsibility for orientation of jurors.

2. Juror Qualifications

As the period of petit jury duty is progressively reduced, there is less justification for the exemption or excuse of prospective jurors, particularly on professional/occupational grounds. Federal court standards currently applicable to juror selection in the District of Columbia (28 U.S.C. § 1863-1869; D.C. Code 1973, § 11-901, 11-902) provide for exemption of the following categories: (1) public officials of the United States, state, or local government who are either elected to public office or directly appointed by one elected to office; (2) members of any governmental police or regular fire department; and (3) members in active service in the U.S. armed forces. (These exemptions are in addition to mandatory disqualifications on grounds of noncitizenship or nonresidence, lack of English language proficiency, mental or physical infirmity, and lack of civil rights by reason of criminal record.) Stated grounds for requesting excuse from jury service (over and above the foregoing exemptions) apply to persons who (1) are more than 70 years of age; (2) are actively engaged as members of the clergy; (3) are actively practicing attorneys, medical doctors, dentists, or licensed nurses; (4) are required at home to care for a child or disabled person; (5) are actively teaching or supervising in public, parochial, or private school or college; (6) have served as a grand or petit juror within four years; (7) are self-employed in a "one person" business.

- 69 -

The Committee believes that the foregoing categories of exemptions and excuses are unnecessarily broad and have the effect of enabling many qualified persons to evade their civic duty of jury service. While the exemptions listed appear to be imposed on the District of Columbia Superior Court by the above-cited provisions of D.C. Code of 1973, there seems to be more latitude with regard to grounds for requesting excuse. Any viable plan to limit excuses from jury duty, however, would require the cooperation of the D.C. Jury Commission, which exercises certain prerogatives in this area.

In any event, the Court Study Committee believes that existing policies and practices with respect to exemptions and excuses from jury duty should be examined by the Federal and District officials concerned, with a view to broadening the citizen base of jury service in the District of Columbia. (With reference to excuse ground (6), it is suggested that the above-stated objective could be achieved best by changing the four-year period since last jury service to a six-year period.)

Recommendation: The Court Study Committee recommends that consideration be given to limiting severely the categories of exemptions and excuses presently applicable to the D.C. Superior Court under relevant U.S. and D.C. codes in order to increase the number of persons in the community subject to jury service. The Committee urges that one of the first tasks of the Superior Court Jury Committee, recommended to be established under Section III-A-2 of this Report, be a review of existing policies and practices in the area of jury duty exemptions and excuses. The Superior Court Jury Committee

- 70 -

should prepare recommendations in this area for consideration by the Board of Judges, the Chief Judge, and legislative authorities if statutory change is proposed.

3. Juror Utilization

The efficient use of jurors, directly affecting as it does the overall expense to the community and the attitude of participating citizens toward the jury experience and the court system in general, is the key to the effective operation of the jury system.

a. Jury Pool

The first stage at which the question of effective juror utilization arises is when the prospective juror is called into a jury pool. The Court Study Committee's impression is that the numbers of prospective jurors called for petit jury duty in Superior Court bear little or no relationship to seasonal and other variations (e.g., summer vacation, Christmas/New Year holidays) in juror requirements. The result is a tendency to overcall prospective jurors during slow periods. (According to Court figures, during 1978 the numbers of names drawn for petit jury service were 600 every two weeks except in June and July when the bi-weekly draw was 700.) Effective correlation between supply and demand in this area requires a capability on the part of the Court administration to determine the Court's patterns of juror usage and predict its needs within margins of error that will minimize inconvenience to both jurors and judges. This in turn requires an effective system of day-to-day communication between the Juror Office and court clerks.

- 71 -

A major cause of jury pool overcall is the common reluctance of court personnel to make judges wait, even briefly, for a jury. However, occasional brief waits by judges for jurors is a necessary component of efficient juror utilization, the alternative being the consistent overcall of jury pools.

Recommendation: The Court Study Committee recommends that the D.C. Superior Court take steps to bring the members of prospective jurors called for jury duty into closer approximation to the actual needs of the Court.

b. Telephone Call-In

In many jurisdictions a telephone call-in system is used to enable jurors to ascertain on a daily basis the need for their presence in court. Such a system allows jurors to remain at home or return to work when not required for panels. This service saves the community money by reducing juror fees, protects the juror from inconvenience and loss of time, and reduces pressure on juror waiting facilities. Concomitantly, it can serve as a means of refining the accuracy of response by court administration to actual jury needs on a day-to-day basis.

Recommendation: The Court Study Committee recommends that the Court give immediate consideration to the installation of an automatic telephone call-in procedure and service as a part of its petit jury system.

c. Jury Panel

Another source of slippage in efficient juror utilization can be a lack of control over the size of jury panels sent to voir dire. Consistent or frequent overcalling of such

panels almost inevitably will be translated into larger-than-necessary jury pools, with attendant increased expense to the community. Instead of being left to the discretion of individual judges, as is the case in Superior Court at the present time, panel size should be determined by the Court on the basis of such factors as size of jury, type of case, number of parties, number of challenges allowed, etc. Adequate National Advisory guidelines exist for this purpose.

Recommendation: The Court Study Committee recommends that the size of jury panels sent to voir dire be controlled by imposing uniform Court-determined standards for various broad case types rather than leaving this determination solely to individual judges.

d. Earlier Return to Jury Pool

A further measure to the same end would be to release panel jurors for return to the jury pool as soon as they have been eliminated from consideration, a practice not uniformly observed in Superior Court. Personal observation of Committee members and interviews with several judges indicate that in some cases panel jurors eliminated at voir dire may remain in the Courtroom as much as an hour after being excused from the panel. Such a practice cannot be justified when one examines the high cost of operating our jury system.

Recommendation: The Court Study Committee recommends that Court procedures and policies governing voir dire include provision for the immediate return to the jury pool of jurors challenged or excused in voir dire.

- 73 -

e. Selection of Alternate Jurors

Efforts to achieve more efficient utilization of juror personnel in the District of Columbia should not overlook the use of alternate jurors. It has been observed by members of the Committee that in D.C. Superior Court alternate jurors are selected separately from regular jurors, and are specifically labeled as alternates in the selection process. Knowing from the outset that they are alternates, these second-line jurors tend not to pay the same degree of attention to the trial proceedings. If called upon to substitute, they are apt to be less well-prepared.

Recommendation: The Court Study Committee recommends that additional or supplementary jurors be called and impanelled together with regular jurors and that they be apprised of their status as alternate only when the jury retires to consider its verdict at which time the alternate jurors would be identified and discharged. It is the Committee's understanding that a similar procedure is followed in certain other court jurisdictions: e.g., Massachusetts, Michigan, Virginia. Such a system, often designated as an "additional juror" rather than an "alternate juror" system, is discussed with favor in the Commentary to Standard 15-2.7 of the American Bar Association's Standards Relating to the Administration of Criminal Justice (2d ed.).

f. Jury Pooling

Juror utilization might be improved by pooling jurors summoned for duty in both the Superior and Federal Courts for the District of Columbia in order to provide greater flexibility of response to juror needs in the two jurisdictions. (On the face of it, this suggestion would seem

- 74 -

to involve possibly difficult administrative problems which, to the Committee's knowledge, have not yet been explored. Further, the Committee is cognizant that the Jury Commission for the Federal District Court is a congressionally authorized body, and that though it also serves the D.C. Court System any substantive change in this regard would require Congressional action.)

Recommendation: The Court Study Committee recommends that a study be done on the feasibility of a central jury pool to serve both District and Federal courts, or, alternatively, a procedure for "juror-swapping" between pools.

4. Bench-Jury Relations

The principal objective of the recommendations under this heading is to make the relationship between judge and jury more comprehensible to the latter and thus more productive to the former in terms of the quality of justice rendered.

a. Superior Court Jury Committee

There is no better guarantee of the effective administration of the jury system, including the relationship between judge and juror, than the constructive interest and involvement of the bench. One means of encouraging this interest and involvement is the creation of a committee of judges specifically charged with this area of responsibility (as now exists in the U.S. District Court for the District of Columbia).

Recommendation: The Court Study Committee recommends that a standing committee of judges be established to monitor the functioning of the jury system in Superior

Court, and to make recommendations for improvement to the Court Executive and the Chief Judge. Such a Judges Committee would personally review the periodic juror evaluation reports, as well as continuously monitor the use of grand and petit jurors in the D.C. Superior Court through receipt of frequent statistical reports and specialized studies, and other devices.

b. Adequacy and Consistency of Voir Dire Briefings and Cautions

While the quality of bench briefings of jury panels in Superior Court is generally high, the briefings may differ widely one from another in emphasis and style. Several state court systems have adopted standardized briefing language as a means of ensuring uniform and adequate orientations of jurors. These are instructions given by the individual trial judge, initial orientation instructions which all jurors receive. This would seem desirable in the Superior Court, particularly with respect to warning jurors about the possible consequences of juror misfeasance. A consequence of the frequent failure of judges to instruct jurors adequately on the possible results of violations of their oath and the judge's instructions (e.g., contempt citations, mistrial motions) is a disregard of these obligations by some jurors and sometimes even willful transgressions against them. It may also be appropriate to adopt certain standardized questions and cautions that could be utilized by all Superior Court judges, during the initial phase of voir dire, to identify jurors who should clearly be excused for cause.

Recommendation: The Court Study Committee recommends that the Superior Court Jury Committee develop a standardized briefing, to be given by the trial judge to prospective jurors prior to voir dire, on all pertinent subjects, including the potentially grave consequences of violations of the juror's oath and the judge's instruction. The Committee should also consider whether it is practicable and desirable to adopt certain standardized questions and cautions to be utilized by Superior Court judges during the initial phase of the voir dire.

c. Note Taking

Although the taking of notes by jurors is not generally held to be illegal, judicial authorities are in disagreement as to whether and under what circumstances it is proper. This issue appears never to have been litigated in the District of Columbia. Court Study Committee research on petit juror note taking indicates that the tradition against note taking is rooted in the historical period of our country when only a tiny minority of the populace was literate. In such an environment the note taking prohibition served to protect the illiterate majority from domination by the literate note taker. A further argument proffered against petit juror note taking is that the untrained juror would be so busy taking notes that he/she would lose track of the court proceedings. Nine states now formally permit note taking. (In the D.C. Superior Court grand jurors are permitted to take notes.)

While juror note taking generally seems to be a matter within the discretion of the individual trial judge, prevailing usage in Superior Court seems clearly to bar this

- 77 -

practice. To many contemporary analysts the evident advantage of juror note taking seems to outweigh the supposed disadvantages, particularly in lengthy and/or complicated trials.

Recommendation: The Court Study Committee recommends that the prevailing practice of barring petit juror note taking in Superior Court be re-examined and the petit jurors uniformly be allowed to take notes in the D.C. Superior Court.

d. Safety of Jurors

Many jurors feel apprehension about possible revenge against them by associates of the accused. Most accept that this is a generalized and necessary hazard. They have strong concern, however, about the fact that the lists of potential jurors for each trial contain the addresses of each juror. While these lists are supposed to be available only to the judge and the attorneys, some jurors interviewed by the Committee observed that defendants in cases they sat on would sometimes study the jury lists and make notes from them. The practice of using addresses is said to conform to attorneys' wishes in voir dire. In view of the possible danger to jurors, and the very real fear jurors have in this regard, it would seem reasonable to either delete the jurors' addresses or to state addresses in zip code or ward terms making them less likely to be identified.

Recommendation: The Court Study Committee recommends that the Superior Court adopt uniform practices to alleviate the anxiety felt by petit jurors serving in criminal cases when the defendant has ready access to specific juror home addresses while this information is being examined by his/her counsel

- 78 -

during the voir dire proceedings. The Committee recommends that in criminal cases, juror panel lists with addresses of jurors be distributed to attorneys for use during voir dire, but that those lists be returned immediately after completion of the voir dire.

Judges sometimes permit trials to run late into the evening, with the result that jurors must leave the courthouse after dark and/or when the area is largely deserted. This is a matter of particular concern to women. It is suggested that when it is necessary for trials to continue into the evening, the judge should direct the Courtroom Bailiff to escort jurors who request it to public transportation.

e. Petit Jury Morale

It is the practice of at least one judge in Superior Court to accord jurors the courtesy of having counsel, court aides, and defendants rise whenever the jury enters or leaves the courtroom. Where followed, this practice has been observed to have a highly positive effect on juror morale.

Recommendation: The Court Study Committee recommends that consideration be given by the Court to standardizing the practice of having counsel, court aides, defendants, etc., rise whenever the jury enters or leaves the courtroom.

5. Instructing the Jury in Individual Cases

The premise of our jury trial system is that a representative sampling of community members can fairly and rationally decide legal disputes if they are made aware of the relevant facts and they understand the applicable legal principles. If either of these prerequisites is missing, the system cannot work as it should. Unfortunately, while trial

procedures followed in the District of Columbia (and elsewhere) generally do serve to acquaint the jury with the relevant facts, there is ample ground for doubting the effectiveness of those procedures in enabling the jury to understand legal principles that are supposed to underlie its verdict.

Typically, District of Columbia juries are instructed on applicable legal principles in a single, oral charge immediately prior to deliberation. Often the charge lasts 30-60 minutes or more, well past the normal attention span of average jurors, and involves a dull and monotonous reading of lengthy standardized instructions. These instructions frequently seek to explain legal concepts by articulating the same idea through several successive formulations and with liberal use of terms, such as "proximate cause," "efficient intervening cause," and "speculative or conjectural damages," that are unfamiliar and intimidating to the average juror.

The Court Study Committee believes that there are a number of steps which can and should be promptly taken by the Bar and the Courts of the District of Columbia so as to substantially increase the effectiveness of the process by which juries are instructed in individual cases.

a. Preliminary Instructions

It has become increasingly recognized that many of the instructions jurors receive would be most useful if given at the beginning, rather than the end, of the trial. Informing jurors at the outset about the functions of the Court and counsel, evaluating the credibility of witnesses, the nature and purpose

of expert opinion, direct and circumstantial evidence and interference, and similar matters would obviously make them more effective observers of the trial that follows. Some judges in this jurisdiction do instruct juries on such preliminary matters, but this practice -- and the nature and extent of instructions given -- is far from uniform.

b. Simplification of Standardized Jury Instructions

The District of Columbia is fortunate in having available standardized jury instructions for both civil and criminal trials. These instructions have been drafted, and revised from time to time, by the Young Lawyers Section of the Bar Association of the District of Columbia and have provided an extremely valuable resource for judges and lawyers in countless cases. However, the text of these instructions, as in many other jurisdictions, is often excessively long, complex, and filled with sophisticated language.

Recently, a committee of the Maryland State Bar Association undertook a comprehensive review of the effectiveness of Maryland's standardized jury instructions. That committee discovered that a great many of the instructions were virtually incomprehensible to average jurors and that, in particular, the use of technical or sophisticated terminology often confused and misled jurors. "Proximate cause," for example, was widely thought by jurors to mean the approximate cause, "liability" was thought to refer to "libel," and so on. As a result of its

- 81 -

study, the committee, with assistance of linguists, law professors, and judges, and the use of a dictionary which gives for each word the degree of its familiarity within the general population, undertook a complete revamping of Maryland instructions so as to greatly shorten and simplify them. The term "liability" was eliminated throughout and replaced by the widely understood word "responsibility." "Proximate cause" was eliminated in favor of "cause" (a change which the Maryland Court of Appeals has recently approved). The result of this effort was the publication in 1977 of a volume of Maryland pattern jury instructions which are generally much shorter and simpler than their District of Columbia counterparts.¹

¹ Compare District of Columbia Standardized Instruction No. 70 on Assumption of Risk:

One who, with full knowledge of the material facts, voluntarily places himself in a situation which he knows or should know involves certain dangers or hazards is deemed by the law to assume the risk that he may be injured by one or more of those dangers or hazards, and he may not recover from another for any injuries or damages which he may sustain by reason of those dangers or hazards.

Before this rule is applied to defeat the plaintiff's claim, however, you must be satisfied by preponderance of the evidence that the danger or hazard which caused the injury to the plaintiff was open and apparent, that he was aware of it, or in the exercise of reasonable care should have been aware of it, and that he voluntarily exposed or subjected himself to whatever hazard or danger might reasonably have been involved. Moreover, this doctrine of assumption of the risk is not applied if you find that the plaintiff had the duty or the legal right to expose himself to any of these hazards.

with Maryland Instruction 15:9 on the same subject:

A person who chooses to take a risk, and who understands or should understand the danger associated with that risk, cannot recover damages resulting from that risk.

The Court Study Committee believes that it would be extremely beneficial for the District of Columbia Bar to undertake a similar revamping of standardized jury instructions for this jurisdiction. Assistance for such a project is readily available. The chairman of the Maryland State Bar Association committee, Chevy Chase attorney M. Michael Cramer, has indicated his willingness to brief a D.C. Bar committee on how his committee accomplished its work. The linguists who assisted the Maryland committee -- Veda and Robert Charrow -- are located in the District of Columbia and have considerable expertise in the matter. And the American Bar Association Section of Litigation has developed written guidance for jurisdictions which wish to duplicate the Maryland experience.

Recommendation: The Court Study Committee recommends that a District of Columbia Bar committee undertake to rewrite the standardized jury instructions for criminal and civil cases in language which is short, simple, and readily comprehensible to average jurors.

c. Improved Methods of Communicating the Instructions

Apart from the matter of simplifying the text of standardized instructions, the Court Study Committee believes there is a strong need to improve the method by which those instructions are communicated to juries. Scientists have found that, of all the senses, hearing is the least effective for the receipt of information. Yet, in most District of Columbia trials, jurors are asked to assimilate difficult and unfamiliar legal concepts through a single, extended aural communication.

The Court Study Committee suggests that the Superior Court Jury Committee, whose establishment is recommended above, should undertake a thorough study of techniques which Superior Court judges could employ to increase the effectiveness of their communication of jury instructions. Three techniques, which that Committee should seriously consider, are the following:

First, in complicated cases, it would be wise to divide closing instructions into two or more segments.

Second, the judge might well ask at the conclusion of his/her instructions if the jurors want any of the instructions repeated or have any question about them. Such a procedure could reduce the jurors' feeling of being intimidated by the court system. Admittedly, a judge must be careful to answer any such questions clearly and correctly. However, the risk entailed in permitting such questions seems far outweighed by the opportunity to dispel confusion or misunderstanding before deliberations begin.

Third, ways should be found to make the entire charge available to the jury during deliberations, as is now done in many jurisdictions. This could be accomplished by having the Court's prepared, written charge handed to the jury after it has been read or by having the court reporter immediately transcribe the charge as delivered and provide that transcript to the jury, after review by the judge. Some Superior Court judges have recently begun giving the jury the

tape machine; this technique would be even more effective if the tape were accompanied by an index -- perhaps prepared by the Clerk -- listing the subject matter of each instruction and the recorder meter reading at which each begins.

The Committee is aware that some judges hesitate to submit their instructions to the jury during deliberations for fear that the jurors might look only at a part of the charge rather than considering the instructions as a whole. However, this fear does not seem logically to justify the practice here followed. Realistically, the chance that the jury will be guided by only certain instructions rather than the charge as a whole is far greater if the jurors must rely solely on their recollection of the entire charge rather than having the entire charge available -- in written or recorded form -- during deliberations.

The Committee is also aware that jurors consider it exceedingly difficult, once deliberations begin, to ask questions concerning the evidence or request that specific portions of the trial transcript be read to them. Therefore, they often do not ask for clarification even when there is serious disagreement among the jurors about the facts. The Committee recommends that the Court establish less cumbersome methods for the jury to check the evidence.

Recommendation: The Court Study Committee recommends that the Superior Court Jury Committee conduct a thorough study of techniques to increase the effectiveness of the communication of jury instructions, including (i) dividing the closing charge into segments

in complex cases, (ii) asking jurors if they have any questions at the close of the charge, and (iii) making the entire charge available to the jury -- in written or tape-recorded form -- during deliberations. The Court Study Committee further recommends that the Court establish less cumbersome methods for permitting the jury to review the trial transcript when questions concerning the evidence arise during deliberations.

6. Prereporting Information for Prospective Jurors

Timely and adequate information supplied in advance with the jury summons can greatly alleviate the apprehensions and uncertainties of prospective jurors and thereby encourage them to accept jury service more willingly. At the present time little such advance information is provided prospective jurors by Superior Court, beyond term of service, amount of juror fee, and procedures for requesting to be excused. Additional data that should be supplied in advance through the juror's instruction and information sheet would include such items as:

- location of the Courthouse (preferably with map) and means of access thereto, particularly by public transportation; also parking information;
- availability of relevant Courthouse facilities such as cafeteria, child care center, and first aid room;
- dress requirements (e.g., coats and ties for men);

- 86 -

- a brief explanation of juror's duties and importance of his function;
- approximate hours jurors will be expected to serve each day.

While certain of the foregoing items of information can be, and in some cases are, provided after the jurors have reported for duty, others, including means of access, dress requirements, and child care facilities, are most needed before the jurors leave home. In any event, the more that prospective jurors can know in advance about the experience that awaits them, the less worried they will be about the prospect of jury service.

Recommendation: The Court Study Committee recommends that the Court review its present procedures for briefing prospective jurors, with a view to upgrading the scope and usefulness of the information provided, especially in advance of reporting for jury duty. (Useful guidelines for such briefing can be found in A Guide to Juror Usage, LEAA/NILECJ, December 1974. See also jury briefing materials provided by U.S. District Court for the District of Columbia.)

7. Reception and Treatment of Jurors

An objective of every jury system should be to provide for the convenience and comfort of jurors in such a way and to such an extent as to spare them from avoidable distractions, frustrations, and discomforts that could detract from their effectiveness as jurors and from their appreciation of the importance and value of jury service as a civic duty. Most prospective jurors will be citizens who have never set foot in a court before, so that the orientation process is

unusually important. Presently orientation consists of a film, a pamphlet, and oral instructions given by a member of the Juror Office. The timing problems are such that not all jurors receive all three sets of instructions before they report for their first trial. It should further be considered that in many courts, orientation has been found to be more effective when a judge of the court addresses the new jurors. The steps recommended under this heading would be in addition to or extension of those already taken by Superior Court toward achieving the above-stated objective. Most of the recommendations are self-explanatory, although in a few cases explanatory comments are included.

Recommendation: The Court Study Committee recommends that judges of the Superior Court take an active part in reviewing orientation procedures, and that the orientation information now provided in the Juror Pamphlet and in the oral instructions be combined into an updated pamphlet written in language more comprehensible to its lay readers.

Recommendation: The Court Study Committee recommends that clear and conspicuous eye-level signs be provided in the Courthouse, especially during the first days of jury duty, to direct arriving jurors to the Jury Lounges or other point of assembly.

Recommendation: The Court Study Committee recommends that the daily juror check-in hours be staggered (e.g. 8:00 and 8:30 a.m. on opening day and 9:00 and 9:30 a.m. on other days) in order to reduce check-in confusion and to accommodate those who, by reason of commuting distance, child care, or other problems, find the earlier deadline difficult to meet. Those opting for the earlier hour could expect (subject to the needs of the Court) to be excused earlier in the afternoon.

Recommendation: The Court Study Committee recommends that the current informal designation of the two principal Jury Lounges as "Government" and "Non-Government" respectively be discontinued as unnecessary and confusing.

While no question is being raised here as to a distinction between Government employees and non-Government employees for purposes of recordkeeping, there would seem to be little or no justification for extending that distinction to the physical accommodations provided for juror use. This is particularly true since both lounges are open to all jurors regardless of employment status (a fact which does not appear to be well understood by most jurors). Even though required to sign separate daily attendance rolls, Government employees and non-Government employees do not need to sign in separate lounges.

Recommendation: The Court Study Committee recommends that existing recreational facilities in the Jury Lounge area (i.e., television, cards and games) be expanded by adding a selection of periodicals of general interest and a small library of paperback books.

Recommendation: The Court Study Committee recommends that provision be made for a more comfortable and congenial Juror's Smoking lounge than the present unattractive, uncomfortable, and windowless smoking area.

Recommendation: The Court Study Committee recommends that more convenient and accessible coffee service be made available for the use of waiting jurors.

Coffee service is available to jurors only in the cafeteria on the lowest level of the Courthouse (four floors below the Jury Lounges) and then only until the cafeteria closes at 3:00 p.m.

Recommendation: The Court Study Committee recommends that adequate coat rack facilities be provided for juror use, particularly during the colder months of the year.

Existing coat racks (all of which are in the so-called "Government" Lounge) are wholly inadequate in cold and inclement weather.

Recommendation: The Court Study Committee recommends that steps be taken to alleviate the difficulties currently encountered by sitting jurors in finding their way to and from their assigned Jury Rooms because of confusing or non-existent direction signs in interior corridors and stairways.

Recommendation: The Court Study Committee recommends that the needs of sitting jurors while in their Jury Rooms be provided for more adequately and attentively.

There have been frequent complaints from jurors over the persistent difficulty of having their needs met for such basic items as fresh drinking water and writing materials while in the Jury Room.

Recommendation: The Court Study Committee recommends that rules governing use of the Juror's Dining Room be made clear to all jurors at the beginning of their jury duty.

Until recently the Juror's Dining Room was open to jurors for lunch only when they were sitting on a jury and ordered there under U.S. Marshall escort by their presiding judge. While the Committee has been informed by the Court that jurors are no longer excluded from the Juror's Dining Room except when it is fully occupied by sequestered jurors, this fact does not appear to have been made generally known to jurors or even to Juror Office personnel.

Recommendation: The Court Study Committee recommends that every effort be made to pay juror fees within one week of the end of jury duty.

In recent months it has required up to three weeks for jurors to receive their checks. Such a delay can work a real hardship on non-Government jurors who have already been without pay during their two weeks of jury duty.

8. Evaluation by Jurors

Juror evaluations of petit jury service are sought sporadically if at all in Superior Court, and without systematic follow-up. In addition to the fact that some of the most productive suggestions for improvements in the day-to-day operation of the jury system come from jurors themselves, the very fact of being asked for their opinions tends to improve jurors' attitudes toward jury service. (Thus juror post-evaluation would be of some use even if not analyzed at all.) Court staff have raised with the Committee the issue of "extremely high" expense as a reason for not maintaining a continuing juror evaluation program. The Committee is not convinced of the validity of this argument. In the first place, evidence available to the Committee has not borne out the claim that such a program need be expensive to maintain. Secondly, it is the Committee's understanding that LEAA funds, or-no-cost-to-the-Court professional consultant services, are available for this purpose (through the Center for Jury Studies under grant No. 78X-TA-AX-0045). Finally, there exist in this community many local clubs and organizations which would probably be more than willing to assist the Court, on a volunteer basis, in tabulating and digesting individual juror evaluations. Organizations like the League of Women Voters, the Federation of Civic Associations, and the Citizens' Advisory Committee of the D.C. Bar are all logical candidates to provide the Court such assistance if requested.

- 91 -

Recommendation: The Court Study Committee recommends that the Court maintain a more regular system of juror evaluation of jury service in order to keep itself currently informed of the opinions and sentiments of jurors regarding their utilization and treatment. Such a system should include:

- (1) a jury service exit questionnaire to be filled out by all jurors at the end of their period of jury duty;
- (2) tabulation and analysis of responses;
- (3) prompt distribution of the results to judges, court administrators, and others responsible for the operation of the jury system, and
- (4) a follow-up procedure for providing such corrective action as may be indicated.

9. Future Considerations

In addition to the above areas in which recommendations have been made, the Court Study Committee has identified a number of issues which warrant serious examination but are beyond the scope of the Committee's purview.

- The \$30 daily fee for jurors. This is the highest fee paid in state courts in the United States; most are far less. The D.C. jury fee level was set by Congressional statute, and is the same as the fee paid jurors in federal district courts. In addition, a travel allowance is paid which increases this fee by about 10% although travel is hardly a major cost in the geographically small area of the District. Surveys by the Center for Jury Studies have

- 92 -

thus far shown little correlation between high fees and juror satisfaction. Many jurisdictions pay only a token fee for the first few days, a higher fee if a trial is extended. The committee suggests that in the examination of the One day/One trial issue, the Court review the appropriateness of the existing fee levels with a view toward their reduction.

- Ties between D.C. Superior Court and Federal District Court. The D.C. Superior Court is closely tied to the U.S. District Court through certain formal and informal policies of the Jury Commission of the U.S. District Court. While it does appear useful for both the Federal and local trial Courts within the District of Columbia to use the same jury pool, there are other aspects of this tie that do not seem necessary or desirable under Home Rule.
- Representativeness of jury pool. Is the present system doing the best possible job of providing a cross-section of the population, particularly among the young, the Spanish and other bilingual populations, and the handicapped?
- Representativeness of the trial jury. Does the broad challenge system, which is designed to protect the rights of the defendant, in fact go

- 93 -

so far as to subvert the concept of the randomly selected jury, which is designed to be representative of the community? What is the effect of the growing computerized "psychological profile" approach to jury selection?

- Voir dire. This crucial area of the trial system should be examined on a continuing basis to increase its effectiveness. Individual judges handle voir dire in markedly different ways (as do other courts, e.g., in Prince Georges County, Md. where the procedure has been closely studied and the average time spent to conduct the voir dire reduced to 30 minutes). This is an area in which judges could benefit by sharing their experience. Study is particularly suggested on:

- (1) Jurors who discover during the course of the trial that they know something about the case of which they were not aware during the voir dire. Should the judge, at the end of the testimony, routinely ask whether anything has arisen during the testimony that might make it difficult for jurors to give an unbiased decision?
- (2) Repetitive voir dire questions. Are there standard questions that jurors might

- 94 -

answer in advance on written forms --
without jeopardizing the privacy of the
juror?

Recommendation: The Court Study Committee recommends that the Superior Court institute the use of juror information sheets that include standard voir dire questions. Such sheets should be filled out by prospective jurors before voir dire commences; responses to questions of the juror information sheets should be used as a means of prescreening and striking potential jurors before the commencement of voir dire.

- (3) Jurors who disobey court admonition by going outside of the courtroom for information, or by inspecting the "scene of the crime," create a potentially costly and difficult problem for the court. Should the court consider any sanctions when faced with such juror behavior?

- Directing "biased" jurors away from specific trials. Many potential jurors have had close experience with specific crimes, so close that the judge will always excuse them; e.g., the victim of an armed robbery will routinely be excused from duty in an armed robbery case. The Court Study Committee suggests that the court consider whether such jurors, once identified in voir dire or earlier through improved screening methods, should continue to be sent at random to any criminal court trial,

- 95 -

or whether they should instead be designated for civil jury service.

- Utilization of 6 person juries. In recent years there has been a shift toward using 6 person juries in civil trials, primarily to reduce costs. Some studies have concluded that small juries may have significant negative effects on judgments:

- 1) the smaller the jury, the more likely is it to be unrepresentative of the community; and
- 2) certain statistics suggest that 6 person juries tend to produce a pattern of verdicts consistently different from the verdicts of 12 person juries. These same studies question whether the small savings achieved in time and money are worth the possible deviation from the "normal" jury action. The Court Study Committee suggests that the Court investigate possible dangers in the use of 6 person juries.

B. Grand Jury

INTRODUCTION

Grand Jury reform has been an active pursuit in many jurisdictions in the United States and elsewhere. Great Britain, which conceived the grand jury idea, abolished the grand jury procedure during the 1930's. In the United States about a third

of the states have also abolished the grand jury. A detailed examination of the grand jury system in the District of Columbia Courts appears to be warranted at this time particularly because of the proposed transfer of the adult prosecution responsibility to the District government, and the fact that the District of Columbia Council is now considering a substantial revision of the entire D.C. Criminal Code. However, such a comprehensive study remains beyond the scope and capacity of the Court Study Committee. Thus, the materials which follow are intended to raise several administrative, procedural and substantive issues in the grand jury area for consideration by the D.C. Courts leadership, the Council of the District of Columbia, the Bar leadership, and others, leaving to a subsequent body the task of a detailed study of the role and use of the grand jury in the District of Columbia.

In examining the grand jury system in the D.C. Court System, the Court Study Committee interviewed judges, administrative personnel in the court system, staff of the U.S. Attorney's office, private attorneys, and one citizen with prior grand jury service in the D.C. courts. While the Court Study Committee wanted to interview on a random basis additional members of the public with prior D.C. grand jury service, the Committee was denied access to the names of these persons by the Office of the United States Attorney and the Chief Judge of the Superior Court.

1. Grand Jury Description

Unlike the petit jury, which hears civil and criminal cases for trial adjudication, the grand jury, by design, functions in the pre-trial case processing period and considers only matters of a criminal nature. Basic legal authority for the use of the grand jury stems from Article V of the U.S. Constitution which states in part that, ". . . [n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . ."

Two types of grand juries are used in the District of Columbia, investigative and indicting. (For reasons expressed below, the bulk of the Committee's attention is directed to the indicting grand jury.) Procedurally, the indicting grand jury holds hearings in the vast majority of serious criminal cases (felonies) after the arrest and subsequent initial judicial appearance (the preliminary hearing). The indicting grand jury, consisting of 23 persons, hears evidence in cases presented by the prosecuting government attorney, with witnesses where appropriate also being heard. The grand jury then determines by majority vote whether there is sufficient evidence in individual cases to make a formal accusation, or indictment, against a defendant in such cases.

According to an October, 1979, report prepared for the D.C. Superior Court by the Whittier College School of Law Courts Delay Reduction Team, in F.Y. 1978 in the District of

Columbia, the period of time from preliminary hearing to the return of an indictment by the indicting grand jury averaged 62 days. (In 1968-1969 the median time for this stage was 50 days in the District of Columbia, according to the November 1969 Report by the Committee on the Administration of Justice of the Judicial Conference -- known as the Ellison Committee that examined the Grand Jury Unit of the U.S. Attorney's Office.) Approximately 3,300 cases come before the indicting grand jury each year with indictments being returned in about 95 percent of the cases. Indicting grand juries sit five days a week for a period of 60 days. At any one time there are three indicting grand juries sitting in the District of Columbia. Grand jurors receive compensation of \$30 per day plus mileage, with the exception of government employees of the District of Columbia and Federal government who are paid their regular salary and no separate juror compensation other than mileage.

The second type of grand jury is the investigative grand jury. This body has many of the same administrative characteristics in terms of size, compensation, majority voting and the like, as the indicting grand jury. However, as the name implies, the basic function of the investigative grand jury is fundamentally different than the indicting grand jury. There is one investigative grand jury sitting at any one time in the D.C. Courts, and this body normally sits for a term of six months on a twice-a-week basis. Rather than hear

- 99 -

serious criminal cases for those persons already arrested, the investigative grand jury performs factfinding and related investigative work on particularly complicated alleged criminal matters. The main work product of investigative grand juries, like indicting grand juries is indictments. Because of the specialized nature of investigative grand juries, their remoteness from the direct flow of most criminal cases, and the fact that they are fewer in number, the Committee has no findings and recommendations specific to this area.

2. Administrative Issues in the Operation of the Grand Jury System in the D.C. Courts

In theory, members of the grand jury are under the direct and continuing supervision of the Court, with their administrative needs handled by the Court's jury office as it is in the petit jury area. Interviews conducted by the Court Study Committee discerned that appropriate judicial contact with the grand jury is maintained in matters of judicial concern with regard to the grand jury. However, in the administrative area it appears that by default the U.S. Attorney's Office is saddled with the chore of tending to most all of the daily needs of persons in grand jury service. While the reasons for this situation may be explained by a lack of sufficient initial juror orientation, it does place the prosecutor and individual grand jurors in an awkward position when at the same time the prosecutor is seeking the grand jury's approval of criminal indictments. The grand juror's attendance

- 100 -

problems, compensation issues and the like should be attended to by the Superior Court staff and not by the prosecutor.

Recommendation: The Court Study Committee recommends that the Court Executive, in consultation with the U.S. Attorney's Office, review existing administrative support issues in the grand jury area and take such steps as may be necessary to remove responsibility for these services from the U.S. Attorney's Office.

The physical appearance and comfort of the grand jurors working quarters detracts from the jurors' work. The Committee understands the important security reasons for use of windowless, soundproof rooms for grand jury meetings. Reports of the rooms being excessively stuffy and lacking in ventilation and proper heat controls, lack of coat racks, absence of adequate storage facilities for grand jurors' notes, and no shredding equipment for destroying such notes and records at the close of the grand jury's service, however, all need attention by the Court.

Recommendation: The Court Study Committee recommends that the Court Executive, in consultation with the Office of the United States Attorney and presently sitting grand jurors, review the physical accommodations and comfort of the grand jury quarters and take such steps as may be required to assure that improvements are made.

The final administrative issue in the operation of the indicting and investigative grand juries in the D.C. courts concerns the absence of any procedures for receiving comments and suggestions for improvement from grand jurors. Members of the Court Study Committee, for example, were seriously concerned about the 60-day period the indicting

- 101 -

grand jury sits, and the disruptive effect of such lengthy required service on an average citizen's life. While the Office of the U.S. Attorney noted that it has received no complaints about this particular matter, and further that this length of service was preferable due to the nature of the work of the indicting grand jury, neither could it provide information on the number or category of potential jurors who were excused because they could not serve such a long period of time. The pattern of excuses may imbalance the random choice of jurors and thus may result in an unrepresentative grand jury.

Recommendation: The Court Study Committee recommends that the Court consider substantially reducing the 60-day term now required of grand jurors, in order to reduce demands on individual jurors and to assure that the grand jury is representative of the community.

Recommendation: The Court Study Committee recommends that the Jury Office of the D.C. Superior Court develop and use periodic end-of-service suggestion/evaluation forms in the grand jury area. These forms should be tabulated and the results shared with the U.S. Attorney, the Chief Judge of the D.C. Superior Court and other judicial and administrative Court personnel as appropriate. Also during the period of a grand jury's service the Court periodically should inquire about any outstanding administrative or other problems jurors are having. (Unlike petit jury members who have quite frequent interaction with Court staff, the grand jurors are very isolated and need to know the Court is aware of their presence and appreciates their service to the community in this area.)

3. Substantive Issues in the Grand Jury Area

A host of substantive issues exist in the grand jury area in this community that need examination and resolution. The Court Study Committee in this subsection will identify only a few of these issues. However, as noted at the outset of this discussion, we believe it appropriate that a subsequent body explore many of these issues in greater depth.

Three indicting grand juries are used in the D.C. courts at any one time. These bodies consider virtually all felony cases -- about 3,300 per year -- and as noted above return indictment 95 percent of the time. Persons familiar with grand jury proceedings point out that in certain cases the indicting grand jury performs a very useful role, for example by reflecting community feeling. However, interviews with practicing attorneys directly familiar with the operation of the Grand Jury Unit revealed the fact that in perhaps as many as 75% of the cases coming before the indicting grand jury, the basic facts in the cases are not in serious question and the grand jury merely goes through the motions of returning the indictment. This impression was generally confirmed in informal discussions with staff of the U.S. Attorney's office. The grand jury hearing often appears to be superfluous, because the jury is not in a position to exercise independent judgment or perform a substantive function. In this regard, the Committee takes note that a number of jurisdictions have decreased, or entirely eliminated, the number of indicting grand juries convened each year.

- 103 -

One of the issues mentioned frequently in the literature and in interviews about the grand jury system is the strong tendency toward prosecutor dominance of the grand jury. As noted earlier, the Court Study Committee was denied access to the names of persons with prior grand jury service in the D.C. Courts and thus could not form an independent view in this regard. The one prior D.C. grand juror whom the committee was able to interview felt strongly that prosecutorial dominance was a major problem that was partly created by the system itself. In this juror's experience:

1. The "Prosecutor" (a member of the U.S. Attorney's Office, which will prosecute the case if it proceeds to trial) was the only source of evidence presented to the grand jury.
2. The accused did not appear before the grand jury in any case. In theory the accused may be summoned upon a vote of the majority of the grand jury; in practice this never occurred during this juror's term of service.
3. The indictments were not voted after each case was heard. Instead they were voted all in a series at the end of each week, when grand jurors had many separate cases to consider, and were vague about which incidents they were discussing.

- 104 -

4. There was little substantive deliberation or discussion of the cases by the grand jurors, partly because of the huge volume to be handled and partly because discussion was discouraged by the Prosecution.
5. Group dynamics during the long period of service together tended to polarize the group into an overwhelming majority that followed the prosecutor's suggestions without question.

However, to partially alleviate so-called prosecutor dominance, a statutorily proscribed procedure used in at least one other state may be worth considering in the District of Columbia. New York State requires persons sitting on grand juries to have prior petit jury service. One apparent reason is that the better informed the grand jurors are about the role and place of the grand jury in the flow of criminal cases, the more independent, theoretically, their judgment will be, and hence their service also will be more effective.

Literature abounds on the basic value and wisdom of bringing persons accused of criminal conduct to trial as soon as possible. As noted above, an earlier D.C. court management study conducted under the auspices of the Judicial Council of the District of Columbia showed that in 1969 the median time from the preliminary hearing to the return of the indictment was 50 days. In 1978 this period had risen to 62 days. While the Court Study Committee understands that administrative and

other changes were to be made in 1979 by the U.S. Attorney's office and the processing flow of serious criminal cases was to be reduced to about 30 days, it does appear that the past ten years have not seen needed improvement to more quickly bring accused defendants to trial in serious criminal cases.

The paragraphs above suggest a number of substantive issues in the grand jury area, which in the opinion of the Court Study Committee warrant examination. Many other serious issues such as the lack of formal charging policy by the Grand Jury Unit of the U.S. Attorney's Office have not been considered and are beyond the scope of this brief report. In 1977, the American Bar Association, after a several year study, issued a set of recommendations for reform in the grand jury system. While a relatively few of those recommendations are subject to controversy, their overall findings deserve serious and thoughtful study by this community.

Recommendation: The Court Study Committee recommends that an ad hoc committee be appointed to examine the many substantive issues in the grand jury area and develop appropriate legislative and related findings and recommendations. The ad hoc committee should examine such issues as caseflow procedure, membership, length of service of the grand jury, the possibility for revising the definition of infamous crime, and other methods of reducing the number of cases that are processed by the grand jury. Membership on such an ad hoc body should include lay members, prosecutors, defense counsel, judges, senior administrative staff of the Court, and others as appropriate.

SECTION IV WITNESS MANAGEMENT AND THE DISTRICT
 OF COLUMBIA COURTS

INTRODUCTION

Cooperation by witnesses is a vital factor in the effective operation of the D.C. criminal justice system. It is ironic, however, that witnesses frequently have been treated differently throughout the criminal justice process. The landmark study, Witness Cooperation, by Frank Cannavale and William Falcon, for the Institute for Law and Social Research (INSLAW), found that this lack of sensitivity to the special problems of witnesses is the central reason for their failure to cooperate with police and prosecutors. This study, along with another INSLAW study, What Happens After Arrest, also demonstrates that the attitude of witnesses is a major factor in determining whether convictions result. In fact, 38 percent of all cases are dismissed where witnesses fail to cooperate. Thus, official indifference to witnesses has a demonstrable effect on the entire criminal justice process.

Official indifference toward witnesses manifests itself in many ways. Names and addresses of witnesses have been recorded incorrectly by police or persons in the prosecutor's office, effectively ensuring that persons whose presence in Court is essential will not appear at trial. Witnesses ignorant of their role and responsibilities in the judicial process have had insufficient access to needed information. Inadequate notification procedures often have prevented witnesses from learning

the current status or the disposition of their cases. The inconvenience and unpleasantness of spending excessive time at the courthouse for no apparent purpose have caused persons to become uncooperative after their first experience as a witness.

The Superior Court Division of the United States Attorney's office recently instituted a Victim-Witness Assistance Unit ("Witness Unit"). The Unit is headed by former police inspector Joseph O'Brien, who supervises two paralegals and two clinical assistants. The Court Study Committee anticipates that the Witness Unit will play a central role in resolving witness management problems that have beset the District of Columbia's court system. Thus, this appears to be an especially appropriate time to highlight witness management problems and set forth a number of recommendations in the witness area.

Many of the concerns identified below examine the problems of witnesses from the perspective of government witnesses in criminal cases. Because these witnesses have significantly greater contact with courthouse officials from police to prosecutors than defense witnesses in criminal cases or witnesses in civil cases and thus appear to be affected more by potential bureaucratic inefficiencies, the Committee felt it was appropriate to focus on the special problems facing government witnesses in criminal cases. However, much of the discussion below applies as well to other categories of witnesses. For example, a witness unit could perform similar

functions for government counsel and witnesses in juvenile delinquency proceedings brought by the Corporation Counsel.

A. Current Problems with Witness Notification and Contact

More than any other aspect of witness management, the problems of notification merit the immediate attention of the U.S. Attorney's Office Witness Unit. Currently, notification to witnesses of scheduling changes, witness conferences, and changes in the status of a case (including the fact that a case has been dropped) is handled on an ad hoc basis by the overburdened Assistant U.S. Attorneys. As a result, notification procedures are haphazard, communications' breakdowns are frequent, and the witness bears the brunt of the burden caused by systemic inefficiency. Frequently, witnesses are not contacted at all during the interval between the crime and the period immediately preceding trial.

1. Notification of Witnesses

The Witness Unit undoubtedly will pay for itself in public good will if it improves witness notification procedures. Currently, the Witness Unit provides notification to both felony and misdemeanor witnesses, only when requested to do so by the Assistant U.S. Attorney assigned to the case. We commend this step. However, we see no reason why the Witness Unit should not completely relieve the Assistant U.S. Attorneys of this burden by assuming full responsibility for notifying witnesses to misdemeanor offenses. To assume this

responsibility should not overburden the Witness Unit since a large percentage of misdemeanor witnesses are police officers who do not need the notification services of the Witness Unit. Thus, to prevent the continuation of the pitfalls of the current ad hoc notification system, we suggest that the Witness Unit assume the responsibility for notifying both misdemeanor and felony witnesses.

Recommendation: The Court Study Committee recommends that a witness assistance unit be established in the Office of the D.C. Corporation Counsel to provide witness management services for actions brought by the Corporation Counsel such as juvenile delinquency, neglect and abuse, and intra-family proceedings.

Recommendation: The Court Study Committee recommends that the Witness Unit relieve the Assistant U.S. Attorneys of the task of notification and assume full responsibility for notifying misdemeanor witnesses.

2. Locating Witnesses

Many witnesses are lost to the criminal justice process during the interval between the crime and the period immediately preceding trial. During that period, the witness may move or change his/her phone number, and the prosecutor or defense counsel must then spend needless, and sometimes fruitless, hours attempting to find the witness. A system that is automatically designed to update vital information automatically on each witness will eliminate this dilemma. We understand that the Witness Unit uses the computer facilities of the U.S. Attorney's Office to store and update witness information including name, home and work addresses and phone numbers. We

encourage the Witness Unit to continue using the U.S. Attorney's Office Computer facilities for witness management functions including Computerized Notification forms.

3. Witnesses' Courthouse Experiences

Despite the best efforts of the courts and prosecutors for institutional efficiency, witnesses will still have to spend a significant amount of time in the courthouse. To make this experience as painless as possible, clear signs and maps of the courthouse must be available for all witnesses. Substantial improvements have been made since the Courthouse opened, and we commend these efforts. The recently designated witness lounges should be maintained and should include and information officer, a public telephone, comfortable chairs, good lighting, and suitable reading material.

Recommendation: The Court Study Committee recommends that maps of the courthouse be provided to witnesses when they receive notice of witness conference subpoenas. Information officers should be assigned to the witness lounges.

Periodic contact with witnesses during the interval between the crime and the trial is one way to prevent the loss of witnesses. Currently, that contact is performed in the prosecution area on an ad hoc basis by the Assistant U.S. Attorney assigned to the case, and the number and nature of witness contacts varies accordingly. The Witness Unit should relieve the Assistant U.S. Attorneys of this task, and should institute a system for continuing contact with witnesses. We suggest that each witness be contacted at least bimonthly.

- 111 -

During contact, the Witness Unit staff should verify all recorded information pertaining to that witness, and attempt to answer any questions the witness may have. As far as possible, the same staff member should deal with the witness each time.

Recommendation: The Court Study Committee recommends that the Witness Unit institute a system for continuing periodic contact with witnesses during the interval between the crime and the trial. It would appear that such witness contact should occur at least bi-monthly.

4. Subpoena Procedures and Calendaring

The Cannavale Study found that one of the main complaints of witnesses was the amount of time spent at the courthouse before testifying. One reason for this waste of time is the current practice that requires a witness to spend the whole day in court if there is any chance he/she might be called to testify. The use of an "on call" subpoena procedure requiring that a witness be available on short notice to come to court would prevent this waste of time. The Witness Unit should be able to administer an "on call" subpoena program, at least on a trial basis. The Committee notes that the beeper system recommended in Section I of this Report could be used in conjunction with an "on-call" subpoena procedure to further reduce the amount of time each witness must spend in the Courthouse before testifying.

The calendaring practices of some judges appear to result in inconvenience to witnesses in requiring attendance

in court even when it is unlikely that the case will be heard on a particular day. This practice often causes witnesses to spend an excessive period of time in court. The District of Columbia and its taxpayers pay a large price -- in witness fees for that time, and in the ill-will generated toward the criminal justice system by witnesses who are so routinely inconvenienced.

Recommendation: The Court Study Committee recommends that the U.S. Attorney's Office improve subpoena procedures to minimize time unnecessarily spent in court by witnesses. The Witness Unit should also institute an experimental "on call" subpoena system.

Recommendation: The Court Study Committee recommends that the Chief Judge of the Superior Court set uniform standards for calendaring cases, and assure that the standards adopted reflect recognition of the problems of witness convenience.

B. Witnesses and the Police

1. Fostering Cooperation

The police officer is the most essential person in any witness management program. Often, the police officer is the only official in the criminal justice system who has the opportunity to establish a one-to-one relationship with a witness. If that relationship results in feelings of trust on the part of a witness, he/she is much more likely to cooperate, with the result that the prosecutors will achieve a higher rate of conviction. In fact, the INSLAW study, What Happens After Arrest, shows that the attitude and manner of the police

officer toward the witness is a major factor in obtaining witness cooperation and, concomitantly, in obtaining convictions.

Therefore, it is essential that all police officers be aware of their role in facilitating cooperation from witnesses. To this end, we suggest that a portion of police training be devoted to instructions in the inter-personal skills necessary for effectively dealing with witnesses. In addition, officers should be instructed as to the importance of the police/witness relationship in fostering cooperation of witnesses. Moreover, witness management skills should be included as a part of any post-graduation training seminars.

Recommendation: The Court Study Committee recommends that a portion of police training, both pre-service and in-service, be devoted to witness management, emphasizing the vital role each officer can play in assuring witness cooperation.

2. Performance Evaluation

Because the role of the police officer is so essential in fostering the cooperation of witnesses, a police officer who does this portion of his job well should be recognized and rewarded just as police officers are recognized and rewarded when they do other parts of their job well.

Recommendation: The Court Study Committee recommends that performance with respect to witness management be a part of the routine evaluation of the police officer's overall performance.

3. Identity Verification

The first contact that witnesses have with law enforcement officials is usually the police. Recording the correct names and addresses of witnesses is a threshold requirement for future witness cooperation. Verification of the identity and location of witnesses ensures that witnesses will be properly notified, and thus available to testify at trial. The availability of the witness at trial is often an essential element in obtaining conviction.

Recommendation: The Court Study Committee recommends that the Metropolitan Police Department adopt the procedure of routinely requesting verification of the identity and address of witnesses.

C. Informing the Witness

1. Witness Intimidation

The Cannavale Study found that witnesses are often apprehensive and confused after the crime. Where their fears are not addressed, and where their questions are not answered, it is possible to lose a witness' cooperation. Therefore, at the earliest possible time, a witness should be provided with information explaining his/her vital role in the criminal justice process.

That information should include a printed handbook, see subsection C-3 below; however, a witness often needs personal contact that printed matter cannot provide. Additional information or counseling to aid a confused, frightened, or apathetic witness is often an important factor in gaining

- 115 -

his/her cooperation. We understand the Witness Unit provides counselling services to some but not all witnesses. Since increased personal contact may encourage witness cooperation, expansion of the current counselling services appears warranted.

Recommendation: The Court Study Committee recommends that the Witness Unit's counselling services be made available to both felony and misdemeanor witnesses. In addition, the Court Study Committee recommends that one Witness Unit staff be specifically designated and specially trained to provide counselling services for witnesses where appropriate.

2. Fees

Witnesses should be informed as to the availability of fees for service as a witness. Time spent by a witness in court or in pretrial conferences generally means lost earnings. Both prosecution and defense witnesses are compensated for time spent in court at the rate set by the statute, currently \$30 for a full day and \$15 for four hours or less. (D.C. Code 1973 § 15-714 and 28 U.S.C. § 1821.) A prosecution witness is also entitled to collect a witness fee for time spent in pretrial conferences. Funds for such pretrial witness fees are supplied by a separate appropriation to the U.S. Department of Justice, rather than from D.C. Court funds.

Despite the fact that current procedures for payment of fees to witnesses are relatively simple -- the witness need only present a voucher that has been prepared for him by the prosecutor's office in order to receive payment -- many witnesses apparently are unaware that they will be reimbursed for the time spent in court and at witness conferences with prosecutors.

- 116 -

Thus, it is important that witnesses be informed early in the process that he/she will receive compensation for such service. We suggest that both the police officer and the prosecutor so inform the witness again during subsequent meetings.

Recommendation: The Court Study Committee recommends that witnesses be informed at their first meeting with both police and prosecutors, and reminded at subsequent meetings, that they can receive a witness fee from the Court for their time. The Committee also suggests that current procedures for paying witnesses be reviewed to minimize inconvenience to witnesses.

3. Witness Handbook

Although effective police treatment of witnesses should include informing them at the time of the police interview of their future role, witnesses nonetheless have a need for an English/Spanish language pamphlet they can retain which includes answers to the most frequently-asked questions and other general information. Such a handbook should include transportation maps, child care information, and a number to call at which a Witness Unit staff member is available to answer questions. We understand that the U.S. Attorney's Office is currently preparing such a witness handbook containing the necessary general information, and we commend these efforts.

Recommendation: The Court Study Committee recommends that the witness unit of the United States Attorney's Office complete a witness handbook and that it includes transportation maps, child care information, and the number where the Witness Unit staff

- 117 -

can be reached. Such a witness handbook should be distributed to government witnesses by the Witness Unit, if necessary, as a matter of course to all identified witnesses. In addition, the witness handbook should be made available for defense counsel to distribute to defense witnesses.

D. Witness Feedback

Witness management procedures must be continually monitored to detect necessary changes. The Witness Unit is ideally adapted to solicit and collect witness reactions to experiences with police, prosecutors, and judges. The Witness Unit can identify recurring problems by devising a questionnaire for witnesses to complete at the conclusion of his/her case or when he/she is no longer needed by the U.S. Attorney. The Witness Unit should tabulate the results of these questionnaires annually and file a report on the findings resulting therefrom with the D.C. Police Department, the U.S. Attorney's office, and the Superior Court Board of Judges.

Recommendation: The Court Study Committee recommends that the Witness Unit develop a questionnaire for collecting witness feedback and annually file a report on the findings resulting with the D.C. Police Department, the U.S. Attorney's Office, and the Superior Court Board of Judges.

APPENDIX A - SPECIAL POPULATIONS

RESOURCES FOR ASSISTANCE WITH SPECIAL GROUPS

Community Services

Andromeda (mental health services for the Latino community)
1756 Columbia Road, 2nd Floor
Washington, D.C. 667-6766

Community Service Center for the Hearing Impaired
2010 Rhode Island Avenue, N.E.
Washington, D.C. 651-5129 (voice and TTY)

Information Center for the Handicapped
1413 K Street, N.W., 12th Floor
Washington, D.C. 20005 347-4986

Cross-cultural Assistance

Foreign Student Service Council of Greater Washington
1623 Belmont Street, N.W.
Washington, D.C. 232-4979

International Student Advisers at area Universities:

American University	686-2078
Catholic University	635-5630
George Washington University	676-6860
Georgetown University	625-4386
Howard University	636-7517
University of the District of Columbia	727-5630

National Association for Foreign Student Affairs 1860
19th Street, N.W. Washington, D.C. 20009 462-4811

Washington International Center 1630 Crescent Place, N.W.
Washington, D.C. 332-1025

Interpreters

Gallaudet College Interpreter Referral Service
Kendall Green, N.E.
Washington, D.C.
651-5634

Registry of Interpreters for the Deaf (National Office)
814 Thayer Avenue
Silver Spring, Maryland
588-1025

APPENDIX A - SPECIAL POPULATIONS

Registry of Interpreters for the Deaf (Potomac Chapter)
c/o Ms. Carol Deninger
12704 Lode Street
Bowie, Maryland 20715
262-7031

Legal Assistance

Ayuda (Latino Community)
1736 Columbia Road, N.W.
Washington, D.C.
387-4848

Institute for Law and the Aging
George Washington University
2000 H Street, N.W.
Washington, D.C.
676-7463

Legal Counsel for the Elderly
1016 16th Street, N.W. 6th Floor
Washington, D.C. 20036
234-0970

National Center for Law and the Deaf
Gallaudet College
Kendall Green, N.E.
Washington, D.C. 20002
651-5457

APPENDIX A - SPECIAL POPULATIONS

DATA AND MATERIALS

Statistical Data

District of Columbia, Department of Human Resources,
Social Rehabilitation Administration.

Galludet College, Public Service Programs.

Institute for International Education, Open Doors:
1977-78: Report on International Educational Exchange.

Metropolitan Washington Council of Hispanic Community
and Agencies.

United States Department of Commerce, Bureau of the
Census, 1970 Census - Metropolitan Washington, D.C.

United States Department of Commerce, Bureau of the
Census, 1976 Survey of Income and Education.

Statutory Material

Annotated Code of Maryland, art. 27 § 623A
(Interpreters for handicapped defendants)

Annotated Code of Maryland, art. 27 § 9-114
(Interpreters for handicapped parties and witnesses)

Annotated Code of Maryland, art. 301
(Appointment and compensation of interpreters for
criminal, civil, and administrative proceedings)

Architectural Barriers Act of 1968, Pub. L. No. 90-480
42 U.S.C. § 4151, et.seq.

(All federally funded buildings must be accessible to
the handicapped)

Bilingual Hearing and Speech Court Interpreter Act,
Pub. L. No. 95-539 (1978)
(Interpreters for non-English speakers and communication
impaired persons in federal courts; includes parties and
witnesses. Use of Spanish as the official language in
the District Court of Puerto Rico)

Diplomatic Relations Act, Pub. L. No. 95-393 (1978)
(Automobile liability insurance required for certain
members of the diplomatic community)

APPENDIX A - SPECIAL POPULATIONS

District of Columbia Criminal Justice Act, 18 U.S.C.
§ 300, 6A(f)
(public funding for interpreters for criminal defendants)

District of Columbia White Cane Law, Pub. L. No. 92-515
(1972)
(Equal Rights for disabled persons in use of District of
Columbia buildings)

New Jersey Statutes Annotated, Title 2A, art. 5, § 2A,
11-28, revised 1963
(Interpreters for criminal defendants from specific
minority groups)

Rehabilitation Act of 1973, Title V, Sections 502 and 504,
Pub. L. No. 93-112, as amended, 29 U.S.C. § 701, et..seq.
(Section 502 was added in 1974 and establishes the
Architectural Barriers Compliance Board; Section 504 in
1976 and requires reasonable access of handicapped
persons to participation and employment in federally
funded programs)

United States Constitution, amendments V and VI

APPENDIX A - SPECIAL POPULATIONS

Organizations and Public Interest Groups

American Coalition of Citizens with Disabilities
1200 15th Street, N.W.
Suite 201
Washington, D.C. 20005

American Council of the Blind
1211 Connecticut Avenue
Washington, D.C.
833-1251

Disabilities Rights Center
1346 Connecticut Avenue, N.W.
Suite 1124
Washington, D.C. 20036
223-3304

D.C. Office on the Aging
Executive Office of the Mayor
1012 14th Street, N.W.
Suite 1106
Washington, D.C.
724-5626

Mayor's Office on Latino Affairs
1012 14th Street
Suite 1101
Washington, D.C.
724-5618

Metropolitan Washington Council of Hispanic
Community and Agencies
2483 18th Street, N.W.
Washington, D.C. 20009
387-4655

National Senior Citizens Law Center
910 17th Street, N.W.
Washington, D.C.
232-6570

Not in Washington:

National Association of Retired Persons
National Center for Law and the Handicapped,
Notre Dame University
Public Interest Law Center
Philadelphia, Pennsylvania
(Urban transportation; transportation concerns
of the elderly and handicapped)

APPENDIX A - SPECIAL POPULATIONS

STAFF TRAINING

Business Council for International Understanding
3301 New Mexico Avenue, N.W.
Washington, D.C.
338-7600
(cross cultural training)

Gallaudet College Public Service Programs
Professional Training Service
Kendall Green, N.E.
Washington, D.C. 20002
651-5480
(hearing impairment)

Society for Intercultural Education, Training
and Research
Georgetown University
Washington, D.C. 20007
625-3391
(cross cultural training and resources)

APPENDIX B

PERSONS INTERVIEWED

1. David Austern, Esq.
918 16th Street, N.W.
personal interview, May 1, 1979
2. Judge Sylvia Bacon
Superior Court of the District of Columbia
personal interview, February 16, 1979
3. Ernest Bailey, Deputy Court Executive
Superior Court of the District of Columbia
personal interviews, February 5, 1979, February 16, 1979
and February 18, 1979
4. Simon A. Balogun, Consular Officer
Embassy of Nigeria
personal interview, March 9, 1979
5. Nancy Becker
Director of Clinical Services
Institute for Law and the Aging
telephone interview, April 6, 1979
6. John Bischoff, Chief Deputy Clerk
Family Division
Superior Court of the District of Columbia
personal interview, April 11, 1979
7. Noel Brennan, Program Officer
Citizens' Complaint Center
Washington, D.C.
personal interview, February 16, 1979
8. Mr. Carusi, Mrs. Prentiss and Mr. Smith
Jury Commissioners
personal interview, January 10, 1979
9. Victoria Cashman, Deputy Director
Implementation of Standards and Goals Project
National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia
telephone interview, December 1978
10. Ms. Clayborn
United States Department of State
Protocol Office, Diplomatic Visa Section
telephone interview, June, 1979

APPENDIX B

11. James Davey, Esq., Clerk and
Joe Burgess, Jury Lounge Staff
U.S. District Court for the District of Columbia
personal interview, February 16, 1979
12. Elizabeth DeCognet
Former Petit Juror
personal interview, December 6, 1978
13. Ms. Carmen Dios, Supervisory Clerk
Marriage Bureau
Superior Court of the District of Columbia
personal interview, February 16, 1979
14. Ronald Foltz, Assistant Deputy Clerk
Small Claims Branch
Superior Court of the District of Columbia
personal interview, April 11, 1979
15. Edgar Garay, Docket Section Supervisor
Small Claims Branch
Superior Court of the District of Columbia
personal interview, April 11, 1979
16. Ruth Gentleman, Coordinator, March 1979
Gallaudet College Interpreter Referral Service
personal interview, March 6, 1979
17. Henry Greene and Joe Volder
U.S. Attorney Office
personal interview, May 10, 1979
18. Margaret W. Gould
Former Juror
letter to Judge Sylvia Bacon, December 4, 1978
19. Eva Guevara, Executive Director
Metropolitan Washington Council of Hispanic Community
and Agencies
personal interview, March 7, 1979
20. Jim Holland, Supervisor of Reporters
Court Reporter Division
Superior Court of the District of Columbia
personal interview, April 11, 1979
21. Patricia Hunter, Administrative Assistant to
the Director
Gallaudet College Public Service Programs
personal interview, March 6, 1979

APPENDIX B

22. Anthony E. Igere, First Secretary
Embassy of Nigeria
telephone interview, March 5, 1979
23. Mrs. Jean Jackson
United States Department of State
Protocol Office, Diplomatic Visa Section
telephone interview, April, 1979
24. Connie Knight, Professional Training Specialist
Gallaudet College Public Service Programs
personal interviews, March 12, 1979, March 30, 1979 and
April 25, 1979
25. Ms. Marcia Kunen
District of Columbia, Municipal Planning Office
personal interview, February 16, 1979
26. Jack Martin, Chief Deputy Clerk
Landlord and Tenant Branch
Superior Court of the District of Columbia
personal interview, April 11, 1979
27. Joanna McGaughey
Free-lance writer
personal interview, June 7, 1979
28. Wayne Moore, Director
Legal Counsel for the Elderly
telephone interview, April 6, 1979
29. Tom Munsterman
Center for Jury Studies
Suite 103
6723 Whittier Avenue
McLean, Virginia
personal interview, March 14, 1979
30. Robert Nash, Chief Deputy Clerk
Marriage Bureau
Superior Court of the District of Columbia
personal interview, February 16, 1979
31. Albert T. Pimental, Director
Gallaudet College Public Service Programs
personal interview, April 25, 1979
32. Carolyn Richardson
Criminal Justice Assistance Program
Superior Court of the District of Columbia
personal interview, April 11, 1979

APPENDIX B

33. Luis Rumbaut, Attorney
Ayuda (legal services for the Latino community)
personal interview, March 7, 1979
34. Judge Joseph M.F. Ryan, Jr.
Superior Court of the District of Columbia
personal interview, February 5, 1979
35. Diane Shisk, Staff Attorney
National Center for Law and the Deaf
personal interview, March 6, 1979
36. John Shutleis
Budget Officer
Superior Court of the District of Columbia
personal interview, November 6, 1978
37. Shelley Jumel Simms
Graduate of Gallaudet College and employed at DHEW
Court tours, June 16 and 19, 1979
personal interviews, July 4 and 8 1979
38. Barbara Stolnick
National Senior Citizens Law Center
telephone interview, March 9, 1979
39. Judge Thomas J. Stovall, Jr.
129th Judicial District Court
610 Civil Courts Building
Houston, Texas 77002
telephone interview
40. Joe Volder
U.S. Attorneys Office
Superior Court of the District of Columbia
personal interview, May 11, 1979
41. Betsy Wohl
Graduate of Gallaudet College
Court tours, June 16 and 19, 1979
personal interviews, July 4 and 8, 1979
42. Virginia Woods
Fund for Modern Courts
New York, New York
personal interview, November 27, 1978

APPENDIX C

BIBLIOGRAPHY

Abt Associates, Citizen Court Watching: The Consumers' Perspective, October 1977.

Amending the Jury Selection and Service Act of 1968, as Amended, Report No. 95-757, Calendar No. 692, United States Senate.

Amending the Jury Selection and Service Act of 1968, as Amended, with Report to the Selection and Qualifications of Jurors, and to Extend to All Jurors in U.S. District Courts the Provisions of Title 5, U.S. Code, Applicable to Federal Employee Service-Related Injuries, Report No. 95-758, Calendar No. 693, United States Senate.

The American Jury System: Final Report, Annual Chief Justice Earl Warren Conference on Advocacy in the U.S., June 24 - 25 1977.

Annual Report, District of Columbia Courts, 1978.

The Bilingual, Hearing and Speech Impaired Court Interpreter Act, Report No. 95-569, Calendar No. 524, United States Senate.

Buchanan, Raymond W.; Pryor, Bert; Strawn, David U.; Taylor, K. Phillip, Reaching a Verdict, Step By Step, Judicature, Vol. 60, Number 8, March 1977.

Buchanan, Raymond W. and Strawn, David U., Jury Confusion: A Threat to Justice, Judicature, Vol. 59, Number 10, May 1976.

Burns, James MacGregor, Leadership, Harper and Row Publishers, New York 1978.

Burt, Marvin R., A Descriptive Assessment of the Processing of Juvenile Cases in the District of Columbia Superior Court, October 29, 1979

Cannavale, Frank J., Jr. and Falcon, William D., Witness Cooperation With a Handbook of Witness Management, The Institute for Law and Social Research, D.C. Heath & Co., 1976.

Carlson, Karin, New York Self Help HandBook, The Citizens' Committee for New York City, Inc., 1977.

Cost of Policy of Excusing Challenged Jurors in Dallas County, Texas.

APPENDIX C

Court Improvement Through Applied Technology, National Center for State Courts Report, February 1979.

Court Management Study, Report for the Use of the Committee on the District of Columbia, United States Senate, Part 2, May 1970.

Court Monitoring Manual, The Fund for Modern Courts, Inc., March 1977.

Court Reform, Vol V No. 2 and No. 3, Fund for Modern Courts, Inc., New York, Spring and Fall 1979.

Criminal Court Monitoring Handbook, Court Monitoring Project - The Fund for Modern Courts, Inc.

Criminal Courts Technical Assistance Project-A Review of the District of Columbia Citizens' Complaint Center, The American University Law School, August 1976.

Special Committee on Criminal Justice, Discussion Paper No. 3, The Association of the Bar of the City of New York, October 1978.

Descriptive Report of the District of Columbia Superior Court Caseflows, Whittier College School of Law, October 1979. (Unpublished.)

Establishing Fees and Allowing Per Diem and Mileage Expenses for Witnesses Before U.S. Courts, Report No. 95-756, Calendar No. 691, United States Senate.

Facets of the Jury System: A Survey, Research and Information Service, National Center for State Courts, July 1976.

Family Court Monitoring Project First Report, Fund for Modern Courts, Inc., March 1977.

Federal Fact 6, U.S. Civil Service Commission, Washington, D.C., January 1975.

Fetter, Theodore; Editor, State Courts: A Blueprint For The Future, National Center for State Courts, August 1978.

Friedrich and McCloskey, From The Declaration Of Independence to the Constitution: The Roots Of American Constitutionalism, The Liberal Arts Press, Inc., 1954

Greene, Harold H., Letter to Councilman David A. Clarke, dated January 24, 1977 (Chief Judge, D.C. Superior Court unpublished.)

APPENDIX C

A Guide for Juror Usage, U.S. Department of Justice, December 1974.

Gurny, Ellen S., District of Columbia: Court Organization Profile, National Center for State Courts, 1977.

Handbook for Federal Grand Jurors, Commission on the Protection of the Jury System.

Hausner, Jack and Seidel, Michael, An Analysis of Case Processing Time In The District of Columbia Superior Court, Institute for Law and Social Research.

Hepperle, Winifred L., "California's Public Information Office", State Court Journal, National Center for State Courts.

Higginbotham, A. Leon, Jr., In The Matter Of Color, Oxford University Press, New York, 1978

Information Policy Of The District of Columbia Court System, Joint Committee on Judicial Administration for The District of Columbia, July 30, 1974.

Interim Report On Juror Usage In The D.C. Superior Court: Panel Sizes, Bird Engineering-Research Associates, Inc., December 18, 1974.

"Juror Instructions", pamphlet, D.C. Superior Court.

Juror Usage In The District of Columbia Superior Court: October, November, and December 1974, D.C. Courts, February 28, 1975.

Jury Service: A Handbook for Jurors, Superior Court of the District of Columbia, 1976.

"Jury System Brings Flexibility To Courts", Washington Post, Thursday, May 31, 1979, Page 1.

Jury System Improvements Act, American Bar Association, Washington Letter, Vol. 14 No. 11, November 1, 1978.

Law Enforcement Assistance Administration/Department of Justice Juror Usage and Management Program, Center for Juror Studies Newsletter, Issue No. 1 - 3, January 1979.

Lumbard, Thomas, Jury System Changes, Memorandum based on U.S. Attorney's Office, (unpublished).

McGaughey, Joanna, "Trials Of A Grand Juror", American Bar Association Journal, Vol. 65, May 1979.

APPENDIX C

McKay, Robert B., Chair, Report Of The Panel On Criminal Justice, Commission for Modern Courts, Inc., New York, May 24, 1978.

Meador, Daniel J., Consumers Of Justice: How The Public Views The Federal Judicial Process, Education and Training Series, Federal Judicial Center.

Meehan, Susan B., Answers: A Problem Solver's Guide To Community Resources In D.C., Hill of Swans Press, 1978.

Padawer-Singer, Alice M., "Justice on Judgements", Paper presented at 1977 Annual Chief Justice Earl Warren Conference on Advocacy in United States.

Report of Pound Conference Follow-Up Task-Force, American Bar Association, August, 1976.

Preliminary Analysis: Judge-Waiting In The D.C. Superior Court, Bird Engineering-Research Associates, Inc., September 24, 1974.

Reports submitted by Deputy Chiefs of the D.C. Superior Court Reflecting the Caseflow Status of their Respective Divisions, May 2, 1979. (Unpublished.)

Revised Uniform Reciprocal Enforcement Of Support Act (1968), Bureau of National Affairs, Inc.

Small Claims Courts: A National Examination, National Center for State Courts, 1978.

Solomon, Maureen, Caseflow Management in the Trial Court, American Bar Association Commission on Standards of Judicial Administration, 1973.

Standards Relating to Trial Courts, American Bar Association Commission on Standards of Judicial Administration, Pages 71 - 74.

United States vs. Diggs, 522 Federal Reporter, 2nd Series, Pages 1315 - 1317.

United States vs. Greene, 522 Federal Reporter, 2nd Series, Pages 1147 - 1150.

APPENDIX C

Yankelovich, Skelly and White, Inc., The Public Image Of The Courts: Highlights Of A National Survey of the General Public, Judges, Lawyers and Community Leaders, March, 1978.

Zander, Michael, "The Jury in England: Decline and Fall?", Paper presented at 1977 Annual Chief Justice Earl Warren Conference on Advocacy in United States.

SPECIAL POPULATIONS SECTION

Coalition of Texas Organizations Serving the Deaf and the State Bar of Texas, Seminar: The Law and the Deaf, Proceedings, November, 1977.

Goldman, Charles D. "For Able Bodied People Only: Building Barriers to the Handicapped", in District Lawyer, Vol.3, #3, December-January 1978.

Hippchen, L. "Development of A Plan for Bilingual Interpreters in the Criminal Courts of New Jersey" 2 Justice Systems Journal, 258 (1977).

Metropolitan Washington Council of Hispanic Community and Agencies, Latino Community Position Paper for Mayor-Elect Marion Barry and His Administration, December, 1978.